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PROCEEDINGS AND ORDERS

DATE: [02/28/92]

CASE NBR: [91106253] CFX

STATUS: [DECIDED]

SHORT TITLE: [Carroll, Thomas]

]

VERSUS [Consolidated Rail Corp.

]

DATE DOCKETED: [101591]

PAGE: [01]

-----DATE-----NOTE-----PROCEEDINGS & ORDERS-----

1 Oct 15 1991 D Petition for writ of certiorari and motion for leave to
proceed in forma pauperis filed.

3 Nov 27 1991 Brief of respondent Consolidated Rail Corporation in
opposition filed.

4 Dec 5 1991 DISTRIBUTED. January 10, 1992

6 Jan 13 1992 Petition DENIED. Dissenting opinion by Justice White
with whom Justice Thomas joins. (Detached opinion.)

1992

01-6253

In The
Supreme Court of the United States
October Term, 1991

No. _____

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SUPREME COURT, U.S.

THOMAS CARROLL, Petitioner

vs.

CONSOLIDATED RAIL CORPORATION, Respondent.

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MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

EDITOR'S NOTE

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WILL BE ISSUED.

The Petitioner, THOMAS CARROLL, asks leave to file the
attached Petition for Writ of Certiorari to the United States
Supreme Court without prepayment of costs and to proceed in forma
pauperis pursuant to Rule 53.

The Petitioner's Affidavit in support of this Motion is
attached hereto.

Respectfully submitted,

J. Michael Farrell
J. MICHAEL FARRELL, ESQ.
716 Arch Street, Suite 400N
Philadelphia, PA 19106

Attorney for Petitioner

In The
Supreme Court of the United States
October Term, 1991

No. _____

THOMAS CARROLL, Petitioner

vs.

CONSOLIDATED RAIL CORPORATION, Respondent.

AFFIDAVIT IN SUPPORT OF MOTION
FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, THOMAS CARROLL, being duly sworn, depose and say that I am the Petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give a security therefor; that I believe I am entitled to redress and that the issues which I desire to present on appeal are the following:

1. Whether the Petitioner stated a cause of action under the Federal Employers Liability Act where he suffered a medically diagnosed major depression with anxiety, obsessive compulsive traits and situational stress response resulting in an inability to continue working, where this impairment is causally related to the prolonged exposure to the work place maintained and operated by the respondent, a railway company?

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? No. I am not presently employed and my last employment was with Conrail on January 9, 1989. My salary at that time was \$40,000.00 a year. I am disabled as a result of the work conditions which give rise to this action and receive disability benefits from the United States Railroad Retirement Board.

2. I have received no income since January 9, 1989 from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or any other sources.

3. I have only a joint checking account with my wife who works as a registered nurse and the balance in our joint checking account is approximately \$1000.00.

4. I own no stocks, bonds, notes, automobiles, or other valuable property. I own my home which has a market value of approximately 159,000.00 with my wife as tenants by the entirety.

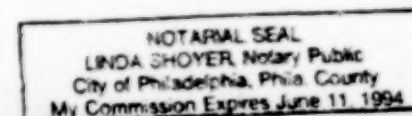
5. I have 2 dependents who depend upon me for support - my 7 year old son David and my 21 year old daughter, Margaret.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Thomas J. Carroll
THOMAS CARROLL

SWORN TO AND SUBSCRIBED TO
before me this 28th day of
October, 1991.

[Signature]
Notary Public



91-5263

No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1991

THOMAS J. CARROLL,
Petitioner,
v.
CONSOLIDATED RAIL CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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Fourth Floor, North
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1

QUESTION PRESENTED FOR REVIEW

The Question presented is:

1) Whether the petitioner stated a cause of action under the Federal Employers Liability Act where he suffered a medically diagnosed major depression with anxiety, obsessive compulsive traits and situational stress response resulting in an inability to continue working, where this impairment is causally related to the prolonged exposure to the work place maintained and operated by the respondent, a railway company?

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No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1991

THOMAS J. CARROLL,
Petitioner,

v.

CONSOLIDATED RAIL CORPORATION,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

OPINIONS BELOW

The ORDER and MEMORANDUM of the United States District Court for the Eastern District of Pennsylvania granting respondent's motion for summary judgment was issued on March 7, 1991 and is reproduced at Appendix A-1. The ORDER and OPINION of the United States Court of Appeals for the Third Circuit upholding the District Court's granting of respondent's motion for summary judgment was issued on August 9, 1991 and appears at Appendix A-10.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254.

CONSTITUTIONAL PROVISIONS, STATUTES
AND RULES OF COURT INVOLVED

The constitutional provisions, statutes and rules of court involved have been set forth in the Table of Authorities.

STATEMENT OF THE CASE

I. Factual Background

Petitioner had maintained long-time employment in the railway industry holding down a variety of jobs with varying degrees of responsibility. From 1986 until January of 1989, he was an assistant chief dispatcher for the respondent, CONSOLIDATED RAIL CORPORATION, with an annual salary of approximately \$41,000 plus the ability to occasionally make overtime. Prior to 1986, he had alternated between duties as an assistant chief dispatcher and a train dispatcher.

Petitioner was responsible for monitoring the whereabouts of trains and their freight, issuing directions via radio to railroad yards and train crews, and maintaining records of these actions and the flow of traffic in his station. These duties required petitioner to receive information from approximately a dozen different sources, collate it and process it quickly, and make critical decisions on traffic flow, often instantaneously.

The atmosphere in the office in which petitioner worked was chaotic and extremely stressful. Petitioner has described a situation in which he was continually harrassed and threatened and that the workplace was operated in a totalitarian state which resulted in a sense of continual dread among the employees who constantly feared they would be blamed for some problem regardless of their involvement in it. Petitioner was not permitted to take a single vacation day or even breaks during his work shifts. There was not even sufficient support personnel present to allow him to have a meal. At times, he received directives which ordered him to violate railroad rules, safety procedures and even federal law. In sum, petitioner described a working environment which was maintained and operated by the respondent which simply lacked sufficient support personnel and equipment.

The cumulative effects of the stressful working place revealed themselves on January 9, 1989. On that date, petitioner was required to work in an unfamiliar portion of the office because of a mechanical breakdown with some of the telephone equipment. The office was in a state of pandemonium because of a misdirected train and the ensuing argument that took place. Petitioner left the office several times and went into the hallway in order to escape the chaos inside. Finally, he called an assistant chief dispatcher to replace him and went home, telling his supervisor he was sick. Petitioner has not been able

to return to work since. Dr. Chaeffsky diagnosed petitioner as suffering from "major depression with anxiety; obsessive compulsive traits; situational stress response; job as currently set up is unacceptable." See Appendix A-113. Dr. Bernard Albert further concluded that petitioner's "emotionally impoverished state and the attending functional limitations and impairments collectively indicate that he is not in a job-ready state." See Appendix A-135. Dr. Albert went on to describe in more detail the symptomology that resulted from petitioner's illness:

"Pressures and concerns on the job resulted in a disturbed sleep pattern. In the latter portion of the 1980's he felt increasingly that he would be blamed for some terrible mishap. He began dreading the telephone for fear of bad news. He felt so intimidated he admitted to his reluctance to answer the telephone and secured an answering machine to screen his calls. He also developed the dread of receiving the mail as he was fearful of certified mail indicating charges which would be leveled against him. He began carrying a concealed tape recorder which he used when talking to management personnel. He had a fear of not being accurately or correctly quoted. He began to suffer memory lapses at work and at home. He developed word-finding difficulties. At times he began doubting that he did what he was supposed to at designated times....[He was subjected to] extreme stress."

In short, petitioner, through his testimony and the diagnosis of his medical providers, have factually stated a claim that his severe mental and emotional disability was causally related to an inadequate and unsafe workplace maintained by the respondent.

II. Procedural History

On January 22, 1991, respondent filed a motion for summary

judgment in the United States District Court for the Eastern District of Pennsylvania before the Honorable Donald W. VanArtsdalen to which petitioner responded.

On March 7, 1991, the United States District Court entered a order granting respondent's motion for summary judgment and an appeal to the United States Court of Appeals for the Third Circuit by petitioner followed on March 14, 1991.

On August 9, 1991, the United States Court of Appeals for the Third Circuit issued an opinion upholding the decision of the District Court and this petition for writ of certiorari follows.

ARGUMENT

I. PETITIONER HAS STATED A CAUSE OF ACTION UNDER THE FEDERAL EMPLOYERS LIABILITY ACT WHERE HE SUFFERED A MEDICALLY DIAGNOSED MAJOR DEPRESSION WITH ANXIETY, OBSESSIVE COMPULSIVE TRAITS AND SITUATIONAL STRESS RESPONSE RESULTING IN AN INABILITY TO CONTINUE WORKING.

In its motion for summary judgment, respondent argued that the tort of negligent infliction of emotional distress requires physical contact as a condition precedent to recovery. They urged that there can be no recovery under the F.E.L.A. for emotional injuries that are caused by a negligently maintained work place.

Petitioner contends that this interpretation of the majority rule is erroneous, and that the proofs submitted by petitioner are sufficient to state a cause of action.

A. Reviewing the Statute:

A review of the F.E.L.A., the statute which governs the case, provides a starting point in analyzing, petitioner's claims. Section I of the F.E.L.A. 45 USC, subsection 51, provides that "every common carrier by railroad...shall be liable in damages to (employees)...for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier..." Thus the F.E.L.A. views the railroad "as a unitary enterprise, its economic resources obligated to bear the burden of all injuries befalling those engaged in the enterprise arising out of the fault of any member engaged in the common endeavor". Sinkler v. Missouri Pacific Railroad Co., 356 U.S. 326, 330, 78 S.Ct. 758, 762 (1958) (emphasis added).

The Act does not propose to define negligence, but rather leaves that task to the common law as announced by the federal courts. Urie v. Thompson, 337 U.S. 163, 69 S.Ct. 1018 (1949). In deciding questions of negligence, the courts have uniformly recognized that a railway is under a nondelegable duty to provide its employees with a reasonably safe place to work. Nivens v. St. Louis S.W. Ry., 425 F.2d 114 (5th Cir. 1970). As a corollary to this duty to maintain safe working conditions, the carrier is required to provide its employee with sufficient assistance in the performance of the work assigned to him. Blair v. Baltimore & O.R.R., 323 U.S. 600, 65 S.Ct. 545 (1945). Where the failure

to provide sufficient help proximately causes injury to the employee, the carrier is liable for negligence. Deere v. Southern Pac. Co., 123 F.2d 438 (9th Cir. 1941) cert. den'd 315 U.S. 819, 62 S.Ct. 916 (1942). Furthermore, the act does not limit recovery to certain types of injury while excluding others, nor does it limit recovery to damages sustained in a single incident or accident in the work place. In Urie v. Thompson, supra, the Supreme Court noted:

"We recognize, of course, that when the statute was enacted, Congress' attention was focused primarily upon injuries and death resulting from accidents on interstate railroads. Obviously, these were the major causes of injury and death resulting from railroad operations, but accidental injuries were not the only ones likely to occur. And nothing in either the language or the legislative history discloses expressly any intent to exclude from the Act's coverage any injury resulting 'in whole or in part from the negligence' of the carrier. If such an intent can be found, it must be read into the Act by sheer inference..."

On its face, every injury suffered by an employee while employed by reason of the carriers negligence was made compensable. The wording was not restrictive as to employees covered, the cause of the injury, except that it must constitute negligence attributable to the carrier; or the particular kind of injury resulting. To read into this all inclusive wording a restriction as to the kinds of employees covered, the degree of negligence required or the particular sorts of harm inflicted would be contradictory to the wording, the remedial and humanitarian purpose, and the constant and established course of liberal construction of the Act followed by this court."

(337 U.S. at 181-82, 69 S.Ct. at 1030)(emphasis added)

B. Searching for the Majority Rule:

As noted above, federal courts are required to apply common law principals in their development of F.E.L.A. jurisprudence.

In so doing, they often search for the majority common law rule

as it has emerged from state court decisions. A particularly illuminating example of this is Teague v. National Railroad Passengers Corp., 708 F.Supp. 1344 (D.Mass 1989). In that matter, plaintiff claimed that his employer had engaged in a course of conduct that harassed and humiliated him. This stressful condition of employment led him to develop ulcers, duodenitis and chest pain. To put it differently, the plaintiff did not allege a single accident or incident as the precipitating cause but merely alleged a medically diagnosed condition directly attributable to the emotional stress under which he worked. That is precisely the position of the petitioner in the instant case. Given this fact pattern, the Teague Court concluded:

"The court holds that a review of developments in the state common law, see S. Plotkin, The Evolution of Tort Liability for Psychic Injuries: A Proposal to Protect Relational Interests (1986) (unpublished thesis on file at the University of Virginia School of Law), as well as developments in Supreme Court F.E.L.A. jurisprudence reveal a sufficient claim has been made out. Teague claims that the insults and harassment of his supervisors at Amtrak caused him mental anguish as well as physical ailments. As the Supreme Court has observed, 'While the traditional rule was that a plaintiff could not recover from mental injuries unconnected with actual or threatened impact, the majority of jurisdictions now appear to have abandoned that rule'. Buell, 480 U.S. at 569, n.20, 107 S.Ct. at 1418 n.20. Indeed, the present majority rule allows recovery for 'mental distress [when] certified by some physical injury, illness or other objective physical manifestation'. Prosser and Keeton on the Law of Torts, Sec. 54 at 364 (5th Ed. 1984); see, e.g., Payton v. Abbott Labs, 386 Mass. 540, 437 NE 2d. 171 (1982); Restatement (Second) of Torts, Secs. 436, 436A and Comments.

As noted above, both the United States Supreme Court in

Atchison, Topeka & Santa Fe R.Co. v. Buell, 480 U.S. 557, 107 S.Ct. 1410 (1987), and Professor Keeton have concluded that a single precipitating event causing an immediate physical injury is not a condition precedent to the tort of negligent infliction of emotional distress. Particularly instructive is Professor Keeton's analysis:

"Starting with an early Irish decision, the great majority of courts have now repudiated the requirement of impact, regarding as sufficient the requirement that the mental distress be certified by some physical injury, illness or other objective physical manifestation. (Prosser and Keeton, supra, p.364).

In support of this analysis, Professor Keeton refers to Payton v. Abbott Labs, 386 Mass 540, 437 NE 2d. 171 (1982) which is also the standard adopted in Teague as representative of the majority common law rule. In that case, females whose mothers had ingested a cancer-causing drug during pregnancy attempted to recover for their own fear of getting cancer, although none of them had the disease or other symptomology at the time of the suit. The court in denying their claim noted:

"The Restatement (Second) of Torts Sec. 436A (1965) sets forth what is still the rule adhered to by the majority of American courts: 'If the actor's conduct is negligent as creating an unreasonable risk of causing either bodily harm or emotional disturbance to another and it results in such emotional damage alone without bodily harm or other compensable damage, the actor is not liable for such emotional disturbance'. The cases generally hold that physical harm is required but (in accordance with the Restatement (Second) of Torts Sec. 436(2)(1965)) the harm need not be caused by impact for trauma; physical harm resulting from emotional stress is sufficient".

(at 552)(emphasis added)

As indicated above, the comments to Sec. 436A of the Restatement (Second) of Torts instructs as to what type of physical harm must be manifested in order to warrant recovery:

"The rule stated in this Section applies to all forms of emotional disturbance, including temporary fright, nervous shock, nausea, grief, rage, and humiliation. The fact that these are accompanied by transitory, non-recurring physical phenomena, harmless in themselves, such as dizziness, vomiting, and the like, does not make the actor liable where such phenomena are in themselves inconsequential and do not amount to any substantial bodily harm. On the other hand, long continued nausea or headaches may amount to physical illness, which is bodily harm; and even long continued mental disturbance, as for example in the case of repeated hysterical attacks, or mental aberration, may be classified by the courts as illness, notwithstanding their mental character".

(emphasis added)

A comprehensive review of the majority rule was provided by the Pennsylvania Superior Court in Crivellaro v. Pennsylvania Power and Light Co., 341 Pa.Super. 173 491 A.2d 207 (1985). There the court was faced with a plaintiff seeking damages for "severe emotional distress and related physical trauma including intense headaches, uncontrollable shaking, involuntary hyperventilation and shortness of breath, frequent nightmares, inability to control bowels, upset stomach, and an intense tightening of the muscles in the neck, back and chest which produced severe pain lasting several days following each incident" (491 A.2d at 210). In holding that these injuries were not from the category of wholly mental or emotional, the court stated:

"We are of the view that these alleged injuries are of much greater magnitude than the "transitory, non-recurring physical phenomena" contemplated by Section 436A. We further note that the "bodily harm" alleged herein is equivalent to or surpasses the kind of physical injury deemed by other jurisdictions to be necessary for recovery of damages for negligent infliction of emotional distress. See Haught v. Maceluch, 681 F.2d 291, 299 n.9 (5th Cir. 1982)(under Texas law, depression, nervousness, weight gain, and nightmares are equivalent to physical injury); Gnirk v. Ford Motor Co., 572 F.Supp. 1201 (D.C.S.D., 1983)(depression and insomnia constitute physical injury); D'Amtra v. United States, 396 F.Supp. 1180, 1183-84 (D.C.R.I. 1973)("psychoneurosis" or acute depression, constitutes physical injury); Eyrich v. Dam, 193 N.J.Super. 244, 473 A.2d 539 (1984)(excessive drinking, "suicidal" ideation, insomnia, depression, hallucinations constitute physical injury); Corso v. Merrill, 119 N.H. 647, 658 406 A.2d 300, 307 (1979)(depression constitutes a physical injury); Mobaldi v. Board of Regents, 55 Cal.App. 3d 573, 578, 127 Cal. Rptr. 720, 723 (1976)(depression and weight loss constitute physical injury), overruled on other grounds, Baxter v. Superior Court, 19 Cal. 3d 461, 138 Cal.Rptr. 315, 563 P.2d 871, 874 (1977); Hughes v. Moore, 214 Va. 27, 197 S.E. 2d 214, 216, 220 (1973)(anxiety reaction, phobia and hysteria constitute physical injury); Daley v. LaCroix, 384 Mich. 4, 179 N.W. 2d 390, (1970)(weight loss and nervousness constitute physical injury); Toms v. McConnell, 45 Mich.App. 647, 657, 207 N.W. 2d 140, 145 (1973)(depression constitutes physical injury). Thus, we conclude that the physical injury here averred was of sufficient magnitude to sustain a cause of action for negligent infliction of emotional distress....

(491 A.2d at 210-11)

Given the above context, a search for a concise statement of the majority rule is in order. Both the Teague court and Professor Keeton point to Payton v. Abbott Labs, supra, as containing such a statement. That court held:

"We therefore conclude on the basis of the preceding analysis, that in order for any of the plaintiffs to recover for negligently inflicted emotional distress,

she must allege and prove that she suffered physical harm as a result of the conduct which caused the emotional distress. We answer further that a plaintiff's physical harm must either cause or be caused by the emotional distress alleged and that the physical harm must be manifested by objective symptomology and substantiated by expert medical testimony. Finally, the emotional stress for which the compensation is sought must be reasonably foreseeable; unless a plaintiff proves that the defendant knew or should have known of special factors affecting that plaintiff's response to the circumstances of the case the plaintiff can recover only for that degree of emotional distress which a reasonable person that normally constituted would have experienced under those circumstances. Whether the emotional distress which a plaintiff has alleged to have experienced is reasonable is to be determined by the finder of fact.

(at 556-557)

C. The Majority Rule in the F.E.L.A. Context:

With the above state rule in mind, it is now appropriate to look for F.E.L.A. cases similar to petitioner's. Teague, supra is an obvious starting point but available precedent does not end there.

In McMillan v. Western Pacific Railroad Company, 54 Cal. 2d 841, 9 Cal. Rptr. 361, 357 P.2d 449 (1960), the court evaluated an F.E.L.A. claim pressed by a train dispatcher who alleged that the railroad had negligently subjected him to working conditions "of unusual responsibility, stress and tension in that he was required to operate a system of central traffic control of defendant's railroad, which system involved multitudinous and complex mechanical factors and mental decisions, extreme responsibility, constant but shifting attention and numerous clerical functions which imposed an unusual stress and burden

upon plaintiff's physical and nervous systems which caused plaintiff to suffer a severe nervous collapse..." (at 357 P.2d 449). In short, the cause of action asserted in this case is virtually identical to those of the petitioner in the present matter.

In holding that the plaintiff had stated a cause of action under the F.E.L.A., the court analyzed Urie v. Thompson, supra, in detail. They noted that the "injury" in Urie was silicosis, an occupational disease acquired during long term exposure to the work place. It was thus clear that the term "injury" as used in the F.E.L.A. context was not limited to the trauma associated with a sudden accident, but rather was a term that included adverse effects on the employee's health. In particular, the California court noted that portion of Urie supra which states:

"...where the employers negligence impairs or destroys an employees health by requiring him to work under conditions likely to bring about such harmful consequences, the injury to the employee is just as great when it follows, often inevitably, from a carrier's negligent course pursued over an extended period of time as when it comes with the suddenness of lightning."

(337 U.S. at 186, 69 S.Ct. at 1033)(emphasis added)

Based on this reasoning, the court had no difficulty in holding that a train dispatcher, who suffered a nervous breakdown as a result of the conditions under which he worked, had stated a claim under the F.E.L.A.

In Yawn v. Southern Ry. Co., 591 F.2d 312 (5th cir. 1979), seven clerical workers brought an action under the F.E.L.A.

alleging that the railroad had negligently failed to provide them with adequate help and adequate time within which to do their jobs, thereby causing them to suffer "physical pain, mental anguish and gastrointestinal disturbances" (591 F.2d at 314). While not passing on the issue of the gravity of the plaintiffs' injuries, the court noted that failure of the employer to provide sufficient manpower for the job at hand was negligence sufficient to impose liability under the act. The Court analogized this claim to several F.E.L.A. cases in which a worker was provided with insufficient help to lift a heavy burden and consequently suffered a back injury. See, for example, Southern Ry. v. Welch, 247 F.2d 340 (6th Cir. 1957) and Masiglowa v. New York, C. & St. L.R.R., 135 F. Supp. 816 (N.D. Ohio 1955). The court then noted: "the fact that these employees did not claim to have suffered a back injury back alleged a less substantial physical injury does not require a different result in this case" (591 F.2d at 317).

In Barker v. Consolidated Rail Corporation, CA No. 85-5304, decided January 24, 1986 (Weiner J., E.D.Pa), the court considered the validity of a claim by a train dispatcher that the increased workload placed upon him by his employer contributed to his heart attack. The court noted:

"Based on the foregoing evidence, we conclude that genuine issues do exist as to whether there was an overload of work, whether the changes in operations and rules were done without consideration of the workload of the train dispatchers, whether the complaints made by the train dispatchers were justified and whether Conrail attempted in any manner to address these complaints. We also conclude that such evidence is sufficient enough to provide a jury

with some rational basis for concluding that some negligence of Conrail proximately contributed to plaintiff's heart attack."

(See Appendix A-12)

The court also faced the argument that the injury to the plaintiff was wholly emotional and, therefore, was not compensable under negligent infliction of emotional distress:

"Conrail has also cited two cases which hold that there generally can be no recovery for emotional disturbance under the FELA without some precipitating physical injury. Ballard v. Central Vermont Ry., 565 F.2d 193 (1st Cir. 1977); Moody v. Maine Central Railroad Company, C.A. No. 84-0415-P (D.Maine, November 6, 1985). In Ballard, the plaintiff was not allowed to recover for fright and mental anguish resulting from the death of one of his co-workers. In Moody, plaintiff was not allowed to recover for mental anguish resulting from harassment.

In the case sub judice, however, plaintiff does not seek recovery merely for emotional disturbance under the FELA but, on the contrary, seeks recovery for a rather severe physical injury (myocardial infarction). Plaintiff has alleged that the mental pain he has suffered has been the result of this myocardial infarction. Therefore, we do not find the Moody and Ballard cases to be relevant.

(See Appendix A-12)

Similarly, in Welby v. Consolidated Rail Corp., 671 F.Supp. 1015 (M.D.Pa. 1987) an employee claimed that his myocardial infarction resulted from the excessive hours which the railroad required him to work. Again, the court held that this represented a valid claim of injury stemming from an unsafe work place and was thus within the scope of the FELA.

In Amendola v. Kansas City Southern Railway Company, 699 F.Supp. 1401 (W.D.Mo. 1988), the court evaluated a claim that was clearly "wholly emotional", i.e., workers exposed to asbestos

sought recovery for their fears of developing cancer in the future. In denying this claim, the court concluded a review of the development of FELA and emotional injury law that is particularly instructive in the instant case:

"An important threshold issue to be addressed is whether the FELA even covers the tort of negligent infliction of emotional distress. In answering this question, the court must glean guidance from common law developments. Buell, 107 S.Ct. at 1417. This court finds that the tort of negligent infliction of emotional distress is covered by the FELA because it is clear that a majority of states now recognize the tort...Furthermore, several federal courts have recently found that a claim for the negligent infliction of emotional distress is cognizable under the FELA. See Taylor v. Burlington N.R.R., 787 F.2d 1309 (9th Cir. 1986); Ballard v. Central Vermont Ry., 565 F.2d 193 (1st Cir. 1977); Gillman v. Burlington Northern R.Co., 673 F.Supp. 913 (N.D. Ill. 1987); Halke v. New Jersey Transit Rail Operations, Inc., 677 F.Supp. 135 (S.D.N.Y. 1987). This trend is consistent with the interpretation of the FELA as a "broad remedial statute" requiring a "standard of liberal construction in order to accomplish (Congress') objects."

(699 F.Supp. at 1408)

This court next turned to the issue of whether and under what circumstances physical harm was an element of tortious conduct under the FELA:

"This court agrees with the rationale in Payton v. Abbott Labs, 386 Mass. 540, 437 N.E. 2d. 171 (1982) and finds that a plaintiff seeking to recover under the FELA for the negligent infliction of emotional distress must introduce evidence that he or she has suffered physical harm as a result of the conduct which caused the emotional distress. The requisite physical harm is not limited to physical injury causing the emotional distress. It is also sufficient if the FELA claimant can establish physical harm caused by the alleged emotional distress. This finding is consistent with the overwhelming weight of authority on the issue. Furthermore, it is in accord with the "common law developments" regarding the tort of the negligent infliction of emotional distress."

(699 F.Supp. at 1410-11)

In Johnson v. Ruark Obstetrics, ___ N.C. ___, 395 S.E.2d 85 (1990), the North Carolina Supreme Court had the opportunity to survey this area of the law:

"Our cases have established that to state a claim for negligent infliction of emotional distress, a plaintiff must allege that (1) the defendant negligently engaged in conduct, (2) it was reasonably foreseeable that such conduct would cause the plaintiff severe emotional distress (often referred to as "mental anguish"), and (3) the conduct did in fact cause the plaintiff severe emotional distress. See, e.g., Bailey v. Long, 172 N.C. 661, 90 S.E. 809 (1916); Green v. Telegraph Co., 136 N.C. 489, 49 S.E. 165 (1904); Young v. Telegraph Co., 107 N.C. 370, 11 S.E. 1044 (1890). Although an allegation of ordinary negligence will suffice, a plaintiff must also allege that severe emotionable distress was the foreseeable and proximate result of such negligence in order to state a claim; mere temporary fright, disappointment or regret will not suffice. E.G., Hancock v. Telegraph Co., 137 N.C. 497, 500-501, 49 S.E. 952, 953 (1905). In this context, the term "severe emotional distress" means any emotional or mental disorder, such as, for example, neurosis, psychosis, chronic depression, phobia, or any other type of severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so."

(395 S.E.2d at 97)

In short, the majority rule as shown above clearly allows recovery for medically diagnosed mental or emotional illness when causally related to the workplace.

D. Applying the Majority Rule to Petitioner's Case

Now that a proper framework has been developed to analyze the petitioner's case, the evidence can be reviewed to determine if the elements of a valid F.E.L.A. claim have been shown. Three questions need to be answered.

- 1) Did the Respondent negligently maintain an unsafe place to work, making injury to the petitioner a foreseeable consequence?

"An Analysis of the Job of Railroad Train Dispatcher", United States Department of Transportation Report No. FRA-ORD & D-74-37 (relevant portions attached hereto as Appendix A-22 with Affidavit of J. Michael Farrell, Esquire attached hereto as Appendix A-34) notes:

"Unfortunately, the interests of business and safety are not always compatible. Delays incurred because of excessive caution on the part of the dispatcher cause delays in delivery of goods to customers. Furthermore, delays increase the risks of spoilage of perishables, loss of lading through pilferage, and damage through vandalism. On the other hand, accidents, losses and damage resulting from the breaking of rules to speed up deliveries are also hazards faced by the train dispatcher; so that he often must choose between equally undesirable alternatives in decision-making. Claims are often heard that supervisory pressure is not always in the interests of safety.

Many of the daily decisions made by train dispatchers involve such conflicts. And the decisions must be made almost instantaneously -- there is not time for deliberation, for careful weighing of alternatives...

Most people faced with the necessity of making frequent, quick, unsatisfactory decisions with severe penalties for mistakes become tense and anxious. So the basic nature of the train dispatcher's job is stressful."

Not only is the job of train dispatcher inherently stressful, but the work place and assistance provided by the employer are critical elements in avoiding injury to the worker. The previously cited Department of Transportation report indicates:

"The principal problem affecting the job of train dispatcher today is the continual stress associated with controlling train movements safely and efficiently. The degree of responsibility, the conflict between the interests of safety and good business, the complexity of the operation, and the frequency of occurrence of operational problems keep the dispatcher at an undesirable level of tension and anxiety throughout his work period. This situation is often aggravated by inadequacies in the availability and organization of information, malfunctions and delays in communications, crowded, noisy, uncomfortable and distracting working conditions, the burden of unnecessary duties (particularly paperwork), excessive workload, and conflicting pressures from superiors."

The same report documents the adverse health effects upon the dispatcher:

"Our review of the impact of the job stresses on the train dispatcher's health (Section 5.4.5) suggested that train dispatchers as a group, tend to die younger than the general population in their age group, with the principal causes of death being coronary heart disease and cerebrovascular disorders. Complaint of ulcers and other disabilities associated with anxiety states and fatigue are frequent among train dispatchers. Although more research is needed to substantiate these findings statistically, certain precautions are indicated in the physical evaluation for selection and monitoring of train dispatchers.

Persons with a history of cardiovascular problems or psychosomatic disorders should not be selected for work as train dispatchers. Although these people might function effectively, the chances are high that they stresses of the job would aggravate their conditions and, in the long run, would be detrimental to their well-being."

The petitioner has testified extensively concerning his experience on the job. He has outlined circumstances virtually identical to those discussed in the above cited report. The individual difficulties described by the petitioner are confirmed

in the "1987 Safety Assessment Consolidated Rail Corporation Eastern Region" United States Department of Transportation (attached hereto as Appendix A-101 and 103 with Affidavit of J. Michael Farrell, Esquire):

"Even more disturbing is that the chief dispatcher and the assistant chief dispatcher do not have the electronic capability of monitoring the actions of the dispatchers. Neither is there an inter-communications system between the dispatching desks, the assistant chief dispatcher and the chief dispatcher so instructions and information are shouted across the room.

The required monitoring of Amtrak radio channels and transmissions from the radio-equipped wayside detectors is disruptive. Communication between dispatchers, assistant chief dispatchers and the chief dispatcher is frequently accomplished by shouting across the room.

The dispatching workload at times was excessive to the point that there was an appearance of having made decisions which were not well thought out. Contributing to the workload are procedures which appear to be time consuming and unproductive."

"The office should be equipped with state-of-the-art equipment which will permit intra-office communication and monitoring of dispatching activities.

The workload factors on both desks are sufficiently high to warrant immediate corrective action by Conrail.

Duties not associated with on-track movements should be removed from dispatching responsibility.

There is an insufficient staff of extra-board dispatchers to provide relief for vacations, personal emergencies and sickness."

In summary, government reports have long indicated that the working conditions of train dispatchers are such that adverse health effects are likely. Both the petitioner and later reports

have shown that despite the known risks, the employer continued to maintain the workplace in a condition that made injury likely.

2) Has the petitioner shown that the negligently operated workplace was the cause of his injury?

The petitioner has produced reports from his treating physician indicating the causal link between his present ailment and the conditions under which he worked.

Dr. Robert Chaefsky, M.D., petitioner's treating physician, noted the nature and extent of Mr. Carroll's injury. His diagnosis is "major depression with anxiety; obsessive compulsive traits; situational stress response; job as is currently set up is unacceptable" (See Appendix A-126). The doctor further elaborates on this diagnosis:

"Anxiety and depression. Obsesses about the pressures of his job. Anxiety dreams persist. Easily overwhelmed. Difficulty with decision making.

Starting early in 1988, Tom had difficulty sleeping, concentrating, memory problems or over-eating. Constant fear that he did something wrong at work as dispatcher for CONRAIL. Almost paranoid regarding phone calls or mail bringing him news of mistake he may have done.

No breaks - even for lunch. Would miss his exit off of Rt. 95 due to preoccupation with problems and pressures. Left work 1/9/89.

(See Appendix A-120)

Dr. Bernard Albert, Ed.D. further elucidated the connection between petitioner's job and his mental disability:

"Pressures and concerns on the job resulted in a disturbed sleep pattern. In the latter portion of 1980's he felt increasingly that he would be blamed for some terrible mishap. He began dreading the telephone

for fear of bad news. He felt so intimidated he admitted to his reluctance to answer the telephone and secured an answering machine to screen his calls. He also developed a dread of receiving the mail as he was fearful of certified mail indicating charges which would be leveled against him. He began carrying a concealed tape recorder which he used when talking to management personnel. He had a fear of not being accurately or correctly quoted. He began to suffer memory lapses at work and at home. He developed word-finding difficulties. At times he began doubting that he did what he was supposed to at designated times. He finally consulted his doctor when his episodes became increasingly frequent in the late 1980's. After consultation with his family physician, he was referred for psychological and then psychiatric consultations. he was placed on medication because of the extreme stress to which he was subjected and instructed to remain off duty. His treatment continued by visit and by telephone."

(See Appendix A-138)

3) Are the injuries shown by the petitioner compensable under the F.E.L.A.?

The answer to this question is already provided by reviewing the symptoms and illnesses outlined in the medical reports quoted in the preceding section, in light of Crivellaro supra and the multi-jurisdictional summary outlined therein. Petitioner has shown a disabling illness, with observable symptoms, and backed by medical diagnosis and opinion. These injuries are, therefore, not of the transitory, minor or speculative nature that can be fairly characterized as "wholly emotional." Lest there remain any question that the medical conditions delineated by appellant are sufficiently physical to warrant compensation, the commentaries to Section 436A of the Restatement of Torts 2nd previously quoted at length resolve the

issue.

II. COMPELLING REASONS JUSTIFYING GRANTING REVIEW

A. This Important Area Under the Federal Employers Liability Act Is Unresolved and There Is a Conflict Among The Circuit Courts of Appeals On the Issue.

As noted above, in Atchison, Topeka & Santa Fe R.Co. v. Buell, 480 U. S. 557, 107 S.Ct. 1410 (1987), the court discussed at length the status of the majority rule concerning the tort of negligent infliction of emotional distress. However, it specifically left open the extent to which, and the form in which, that tort was cognizable under the F.E.L.A. As a result, different federal courts have adopted varying approaches to the question. A number of courts have recognized that the tort exists in F.E.L.A. jurisprudence. See Taylor v. Burlington N.R.R., 787 F.2d 1309 (9th Cir. 1986); Ballard v. Central Vermont Ry., 565 F.2d 193 (1st Cir. 1977); Gillman v. Burlington Northern R.Co., 673 F.Supp. 913 (N.D. Ill. 1987); and Halko v. New Jersey Transit Rail Operations, Inc., 677 F.Supp. 135 (S.D.N.Y. 1987). In addition, a number of courts have adopted the majority rule urged by petitioner in the preceding sections of this brief. See Teague, Yawn, and Amendola, supra.

The Third Circuit has specifically left the parameters of this issue open in Holliday v. Consolidated Rail Corporation, ____ F.2d ____, 1990 W.L. 130914 (3rd Cir. 1990). Within the circuit itself various district courts have taken inconsistent positions. For example, in Kraus v. Consolidated Rail

Corporation, 723 F.Supp. 1073 (E.D.Pa. 1989) appeal dismissed 899 F.2d 1360 (3rd Cir. 1990), the court granted a motion for summary judgment in circumstances virtually identical to the ones presented by petitioner. However, in Carlisle v. Consolidated Rail Corporation, No. 88-8752 (E.D.Pa.), another district court denied the railway's motion for summary judgment again in a context indistinguishable from the present case. See Appendix A-144.

In short, the extent to which the tort of negligent infliction of emotional distress is available to railway workers under the F.E.L.A. is a question that remains unresolved. While many courts have adopted the petitioner's view, others have adopted a more restrictive standard or rejected the existence of the tort outright. Many circuits, like the Third Circuit, have left the issue unresolved.

CONCLUSION

Therefore, for the above stated reasons, petitioner respectfully requests that this petition be granted.

DATED this 14 day of October, 1991 at Philadelphia, Pennsylvania.


J. MICHAEL FARRELL
Attorney for Petitioner

EDITOR'S NOTE

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No. _____ 91-6253

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1991

THOMAS J. CARROLL,
Petitioner,

v.

CONSOLIDATED RAIL CORPORATION,
Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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155P

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FILED MAR - 6 1991

THOMAS J. CARROLL : CIVIL ACTION
:
v. :
:
:
CONSOLIDATED RAIL CORPORATION :
: NO. 89-4650

MEMORANDUM AND ORDER

VanARTSDALEN, S.J. March 6, 1991

Plaintiff Thomas J. Carroll (Carroll) has instituted this action against Consolidated Rail Corporation (Conrail) pursuant to the Federal Employer's Liability Act, 45 U.S.C. § 51 et seq. (FELA). Carroll claims that while acting within the scope of his employment, he was injured due to Conrail's unsafe and inadequate working conditions. Conrail has answered the complaint and has filed a motion for summary judgment which is presently before the court.

Conrail asserts that Carroll fails to state a claim under FELA because Carroll's injuries are all stress-related or caused by his general working conditions, rather than a specific accident. Conrail relies heavily on a Third Circuit Court of Appeals case, Holliday v. Consolidated Rail Corp., 914 F.2d 421 (3d Cir. 1990), cert. denied, 59 USLW 3556 (1991), and a district court case, Kraus v. Consolidated Rail Corp., 723 F. Supp. 1073 (E.D. Pa. 1989), appeal dismissed, 899 F.2d 1360 (3d Cir. 1990).

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Both cases denied recovery under FELA to plaintiffs suffering from stress-related injuries.

Carroll responds that his case is factually distinguishable from Holliday, an opinion the Court of Appeals emphasized was "narrow." Holliday, 914 F.2d at 426. Kraus, he argues, was incorrectly decided. Carroll provides a lengthy discussion of the tort of negligent or intentional infliction of emotional distress, and contends that FELA uses the tort criterion, and that his case meets these requirements.

Standards for a Motion for Summary Judgment

A motion for summary judgment under Federal Rule of Civil Procedure 56 seeks judgment as a matter of law based on the pleadings and evidence. A motion for summary judgment is only appropriate in the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party bears the burden of demonstrating the lack of a genuine dispute concerning material facts, regardless of which party would have the burden of persuasion at trial. First Nat'l Bank of Pa. v. Lincoln Nat'l Life Ins. Co., 824 F.2d 277, 280 (3d Cir. 1987). For a dispute to be "genuine," the evidence must permit a reasonable jury to return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In ruling on a motion for summary judgment, the court must view the evidence and the reasonable inferences arising from it in the light most favorable to the non-moving party, United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); Tigg Corp. v. Dow

Corning Corp., 822 F.2d 358, 361 (3d Cir. 1987); Gans v. Mundy, 762 F.2d 338, 341 (3d Cir.), cert. denied, 474 U.S. 1010 (1985); Baker v. Lukens Steel Co., 793 F.2d 509, 511 (3d Cir. 1986), and must accept as true all allegations of the non-moving party that conflict with those of the movant. Anderson, 477 U.S. at 255.

Factual Background

Mr. Carroll was the assistant chief dispatcher for Conrail from approximately 1986 until January, 1989 and was earning approximately \$41,000 annually, plus occasional overtime. Prior to 1986, he alternated between duties as an assistant chief dispatcher and a train dispatcher. He worked for Conrail for a total of nineteen years in these capacities.

His responsibilities included monitoring the trains and their freight, maintaining records of inventories, and issuing directions over radio to railroad yards and train crews. Carroll regulated the traffic flow of the trains which required him to receive information from approximately a dozen sources, and process it quickly, at times instantaneously.

Carroll claims, and I must accept as true for purposes of this motion, that the atmosphere in the office where he worked was extremely chaotic and tense. He asserts that he was continually harassed, and threatened, and that the office operated like a totalitarian state which resulted in a sense of continual dread among the employees who constantly feared they would be blamed for some problem, regardless their involvement in the situation. Carroll alleges that he was not permitted to take

single day vacations or any breaks during his shifts, even to eat, and did not have sufficient support personnel to meet his job requirements. At times, he received directives which ordered him to violate rules, safety procedures and federal law. See Excerpts from Deposition of Thomas J. Carroll, cited on pp. 3-4 of Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment (hereafter Plaintiff's Brief) (Mr. Carroll's entire deposition is attached as an exhibit to Defendant's Motion for Summary Judgment.)

Carroll has attached reports from his treating physicians which describe how these working conditions affected him. Dr. Robert Chaefsky, M.D. stated that:

Starting in early 1988, [Carroll] had difficulty sleeping, concentrating, memory problems or over-eating. Constant fear that he did something wrong at work as dispatcher for CONRAIL. Almost paranoid regarding phone calls or mail bringing him news of mistake he may have done.

Exhibit H to Plaintiff's Brief, Report of Physical Condition at 2. Dr. Bernard Albert, Ed.D., further elaborated on the effect of Carroll's job on his mental health:

Pressures and concerns on the job resulted in a disturbed sleep pattern. In the latter portion of the 1980's he felt increasingly that he would be blamed for some terrible mishap. He began dreading the telephone for fear of bad news. He felt so intimidated he admitted to his reluctance to answer the telephone and secured an answering machine to screen his calls. He also developed a dread of receiving the mail as he was fearful of certified mail indicating charges which would be leveled against him. He began carrying a concealed tape recorder which he used when talking to management personnel. He had a

fear of not being accurately or correctly quoted. He began to suffer memory lapses at work and at home. He developed word-finding difficulties. At times he began doubting that he did what he was supposed to at designated times. . . . [He was subjected to] extreme stress.

Exhibit I to Plaintiff's Brief at 2.

According to plaintiff, the cumulative effects of the extremely stressful and unsafe conditions in which he worked revealed themselves on January 9, 1989. On that day, he was required to work on the left side of the room instead of the right because the phones on the right were inoperative. The office was in a state of pandemonium because of a misdirected car and an argument about a train consist. The phones were ringing and the radios blaring. Carroll left the office several times for brief walks in the hall, and finally called the daylight assistant chief dispatcher to replace him, and went home, telling his supervisor he was sick. He has not reported for work since. See Carroll Deposition at 58-63.

On August 23, 1989, Dr. Chaefsky diagnosed Carroll as suffering from "major depression with anxiety; obsessive compulsive traits; situational stress response; job as currently set up is unacceptable." See Exhibit H to Plaintiff's Brief at 8. After a vocational evaluation on January 31, 1990, Dr. Albert concluded that "[Carroll's] emotionally impoverished state and the attending functional limitations and impairments collectively indicate that he is not in a job-ready state." See Exhibit I at 5.

Liability under FELA for Stress-Related Injuries

Kraus v. Consolidated Rail Corp., 723 F. Supp. 1073 (E.D. Pa. 1989), appeal dismissed, 899 F.2d 1360 (3d Cir. 1990) held that under FELA, no plaintiff could recover for stress-related injuries caused by their working conditions. Id. at 1090. Although the Third Circuit Court of Appeals adopted the Kraus approach in Holliday v. Consolidated Rail Corp., 914 F.2d 421, 424 (3d Cir. 1990), cert. denied, 59 USLW 3556 (1991), it declined to reject all FELA claims for stress-related injuries: "We are not holding that there can never be a recovery under FELA for emotional conditions unless the employee suffers an immediate physical injury from the railroad's negligent conduct, or unless there is an accident of some kind." Id. at 426-427.

Nor did the Court of Appeals address "whether an employee exposed to dangerous conditions for a protracted period of time, though not in an accident, could recover." Id. at 427. This is precisely the situation Carroll alleges that his case presents. The Court of Appeals cautioned that it was leaving "the door to recovery for wholly emotional injury somewhat ajar but not by any means wide open." Id. (citing Moody v. Maine Cent. R.R. Co., 823 F.2d 693, 694 (1st Cir. 1987)). It declared that a determination whether recovery is permitted must be made "on the basis of the facts in the particular case being considered," rather than on the basis of bright lines. Id.

Accordingly, I turn to an examination of the facts in Carroll's case. Unlike Holliday and some of the plaintiffs in

Kraus, Carroll has not alleged any physical injury resulting from the stress at his workplace; his injuries are completely emotional and psychological. Carroll has not described any specific incidents that caused him to fear for his own safety or the safety of others. Carroll did not witness any accident resulting in physical injury to another.¹ While Carroll complained of a tense atmosphere in his office, he did not relate any experiences in which he was unfairly criticized. The feared phone or mail notifications of complaints against him apparently never arrived. Thus, at most, Carroll witnessed another person being subjected to psychological injury. However, subordinates being berated by superiors is so common in the ordinary course of business that it comprises "a routine management decision," id. at 427, not a negligent act that resulted in unsafe working conditions. Carroll's fear of injury appears to be unfounded.

Holliday, on the other hand, experienced an incident in which he was almost crushed. This incident resulted in a fear of accidents. Carroll had been subjected to stress for a much longer period than Holliday (approximately three years as compared to six days), but this appears to be the only factor which puts his case in a more favorable light than Holliday's.

The Court of Appeals upheld the district court's grant of summary judgment to Conrail, finding that Holliday's situation failed to state a claim under FELA. In doing so, the court noted

1. It appears from the record that Carroll's work involved only freight trains, not passenger trains.

"surely employees in all walks of life are placed in difficult, tense job situations, sometimes for extended periods, so there was nothing unusual here." Holliday, 914 F.2d at 425. This is precisely what happened to Carroll. If Holliday did not state a claim, certainly Carroll's complaint must also be dismissed.

There seems to be no doubt that Carroll's working conditions contributed to his wholly emotional and psychological injuries, but these were a result of "too much--not too dangerous-- work." Lancaster v. Norfolk & Western Ry., 773 F.2d 807, 813 (7th Cir. 1985), cert. denied, 480 U.S. 945 (1987).

Carroll's claims basically stem from the fact that he feels he received inadequate support help, and was not permitted to take single vacation days. Apparently, the office was understaffed. Such circumstances do not give rise to a claim under FELA.

Accordingly, I will grant Conrail's motion for summary judgment. An order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS J. CARROLL	:	CIVIL ACTION
	:	
v.	:	
	:	
CONSOLIDATED RAIL CORPORATION	:	
	:	NO. 89-4650

ORDER

After consideration of the briefs filed by both parties, and for the reasons in the accompanying memorandum, it is ORDERED that Consolidated Rail Corporation's Motion for Summary Judgment is GRANTED. Judgment is entered in favor of the defendant, Consolidated Rail Corporation, and against the plaintiff, Thomas J. Carroll.

BY THE COURT:


Donald W. VanArtsdalen, S.J.

March 6, 1991

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 91-1199

RECEIVED AND FILED
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Clerk

THOMAS J. CARROLL

v.

CONSOLIDATED RAIL CORPORATION
("Conrail")

On Appeal from the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civil Action No. 89-04650)
District Judge: Honorable Donald W. VanArtsdalen

Submitted Under Third Circuit Rule 12(6)
July 10, 1991

BEFORE: STAPLETON, HUTCHINSON, and HIGGINBOTHAM,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by
appellant, it is

ORDERED AND ADJUDGED that the order of the district
court entered March 7, 1991, be and is hereby affirmed.

Costs taxed against appellant.

By the Court,

Walter E. Stapleton
Circuit Judge

ATTEST:

Sally Mrvos
Sally Mrvos, Clerk

DATED: JUL 13 1991

Certified as a true copy and issued in lieu
of a formal mandate on August 9, 1991

Test: Sally Mrvos

Clerk, United States Court of Appeals
for the Third Circuit.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD BARKER :
 :
 :
 VS. :
 :
 :
 CONSOLIDATED RAIL CORPORATION :

FILED JAN 24 1986

C.A. NO. 85-5304

MEMORANDUM OPINION AND ORDER

WEINER, J.

JANUARY 24, 1986

Plaintiff, Richard Barker, brought this action pursuant to the Federal Employers Liability Act ("FELA"), 45 U.S.C. §51 et seq., the Federal Safety Appliance Acts, 45 U.S.C. §1 et seq. and the Boiler Inspection Acts, 45 U.S.C. §22 et seq. Mr. Barker claims that as a result of the negligence of the defendant Consolidated Rail Corporation ("Conrail") in allowing the position of train dispatcher to become overly stressful and demanding, he suffered a myocardial infarction (heart attack). Plaintiff seeks judgment against Conrail in excess of \$75,000 and the costs of this action. Presently before the court is Conrail's motion for summary judgment. For the reasons which follow, we shall deny the motion.

Plaintiff was employed as a train dispatcher with Conrail for 24 1/2 years. He suffered a myocardial infarction while at work, on December 20, 1984.

Plaintiff alleges that the negligence of the defendant consists of the following actions and inactions:

....1) From at least the beginning of 1983 to December of 1984, the defendant increased the workload of the plaintiff and other train dispatchers to such a degree that the job became too strenuous, dangerous, and almost impossible; the workload was increased to such a degree that no breaks could be taken for the entire shift that the plaintiff worked; the workload was increased to such a degree that the job became impossible if one was to remain a healthy human being; the workload was increased to such a degree that an unsafe work place was created for the plaintiff. This was done by increasing the territory that the plaintiff was responsible for and instituting new methods of operations and rules without considering any effect this would have on the plaintiff, without cutting back on the hours worked by the plaintiff and without providing more train dispatchers to handle the unreasonable job requirements.

2) During this same period of time, Conrail was made aware of the situation described in (1) above on many occasions by many different train dispatchers...and yet, the defendant did nothing to alleviate the negligent conditions. These complaints were not because the defendant's continuous conduct created a dangerous, over-strenuous and unsafe work place for the plaintiff.

3) The defendant, during this same period of time, had an increase in the activity of Maintenance of Way gangs used to repair and upgrade tracks. The negligence alleged here is that the defendant knew that the train dispatchers and specifically, the plaintiff were responsible for the increased activities of the Maintenance of Way gangs in their territories and knew of the already dangerous conditions being established as outlined above in (1) and (2) and, therefore, knew or should have known that the combination of all of these factors created a dangerous and unsafe work place in which the plaintiff had to work in order to perform the jobs assigned to him. Again all of this was done while the defendant continuously turned its back on the pleas for assistance from, not only the plaintiff, but practically every train dispatcher in this area....

In support of its opposition to defendant's motion for summary judgment, plaintiff has submitted the sworn affidavits of six train dispatchers who, plaintiff alleges, have worked for Conrail in the same geographical area as the plaintiff. In their affidavits, all six train dispatchers essentially aver the following: 1) that each has worked as a train dispatcher with Conrail for many years; 2) that, beginning in 1983, Conrail instituted a new system for dispatching trains which involved an increase in paperwork, an increase in the territory each had to cover and the installation of a new computer system with which each had very limited training; 3) that in 1984, the Maintenance of Way Department started a massive production season resulting in an increase by the train dispatchers of the monitoring of the activities of numerous maintenance of way gangs; 4) that the rules governing train movements were changed several times by Conrail during 1983 and 1984 making it impossible to keep up with the changes; 5) that they rarely received any breaks and often worked without taking any lunch; 6) that they complained about the increased workload, lack of manpower and lack of breaks to the management of Conrail which never responded. In addition, three of the train dispatchers directly averred in their affidavits that, at the time of plaintiff's illness, plaintiff was very busy and overloaded with paperwork, maintenance of way gangs repairing and upgrading the track and a new computer system which had recently been installed.

To prevail upon a motion for summary judgment the moving party must conclusively demonstrate to the court's satisfaction that there exists no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law, Fed.R.Civ.P. 56(c); Wolk v. Saks Fifth Avenue Inc., 728 F.2d 221, 224 (3d Cir. 1984); Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983). We must view all disputed facts in the light most favorable to the party opposing the motion. EEOC v. Great Atlantic & Pacific Tea Co., 735 F.2d 69, 81 (3d Cir. 1984); Small v. Seldows Stationery, 617 F.2d 922, 924 (3d Cir. 1980).

The test of the quantity and quality of evidence necessary in a FELA case to create an issue for the jury on the questions of negligence and causation as stated in Rogers v. Missouri Pacific Railroad Co., 332 U.S. 500, 506 (1957) is "...simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought." Id. at 506. In commenting on this test the court in Albergo v. Reading Co., 372 F.2d 83, 85 (3d Cir. 1966), cert. denied 386 U.S. 983 (1967) stated that "the evidence may be minimal but it must be sufficient to provide the jury with some rational basis for concluding that some negligence of the railroad proximately contributed to the accident."

In the case sub judice, genuine issues of material fact do exist as to the allegedly negligent conduct of Conrail. Plaintiff states that he acknowledges that the job of a train dispatcher is demanding and contains pressures. However, plaintiff alleges that, beginning in 1983, Conrail, by initiating new systems and rules, overloading the territories covered by each train dispatcher, installing a new computer system and failing to provide breaks and additional manpower made the position of train dispatcher so overly stressful and demanding that plaintiff's work environment became unsafe. The record contains evidence which would support this assertion. All six train dispatchers averred in their affidavits that, beginning in 1983, they became overloaded with work as a result of an increase in train orders, written authorizations necessary for the movement of trains and feeding information into the new computer system. They also averred that, as a result of these new responsibilities, they were rarely able to take a lunch break. They also averred that they had on many occasions complained to the management of Conrail about the excessive workload and the lack of manpower but never received any relief. In addition, three of the train dispatchers directly averred that at the time of his heart attack, plaintiff was very busy and overloaded with paperwork, supervision of maintenance of way gangs, and the new computer system.

Plaintiff testified in his deposition that he switched to another district in April, 1984 in order to escape the increased maintenance of way activity, written authorizations and the use of the computer. (Deposition of Richard Barker, p. 17). Plaintiff further testified however, that, as soon as he switched to another district, Conrail "moved everything over" to plaintiff's new district and plaintiff subsequently became "overloaded" again. (Deposition of Richard Barker, p. 18). Plaintiff testified that he resumed his smoking habit as a result of the changes in the responsibilities of the position of train dispatcher and that, prior to his heart attack, "all he did (at work) was smoke and drink coffee." (Deposition of Richard Barker, p. 48). Plaintiff also testified that his problems started when Conrail started to put "overloads" on his desk, demanded that all information be processed through computers and changed the rules. (Deposition of Richard Barker, p. 56). Finally, plaintiff testified that:

...back in 1962 I thoroughly enjoyed train dispatching. It was a very, very good job and very interesting but the past couple of years why when I was working they put an overload on the job that was just very demanding, very, very demanding. I never had any problem eating my lunch before. See, it's the type of job where you don't have someone come in to relieve you. You eat on the fly when you have time and I always had time years ago. The past couple of years from my guess starting around 1982 it just seemed like you didn't get no time. I bring a lunch in and I was never able to eat it.

Based on the foregoing evidence, we conclude that genuine issues do exist as to whether there was an overload of work, whether the changes in operations and rules were done

without consideration of the workload of the train dispatchers, whether the complaints made by the train dispatchers were justified and whether Conrail attempted in any manner to address these complaints. We also conclude that such evidence is sufficient enough to provide a jury with some rational basis for concluding that some negligence of Conrail proximately contributed to plaintiff's heart attack. Albergo, supra.

In support of its motion for summary judgment, Conrail relies primarily on a decision from the Court of Appeals for the Tenth Circuit, Romero v. Southern Pacific Transportation Co., (District of New Mexico, D.C. No. Civ-82-957 C, July 15, 1983), affirmed No. 83-2033 (10th Cir. Dec. 13, 1984). In Romero, plaintiff's decedent was a freight carman for the defendant railroad. His job duties required strenuous work such as digging holes and lifting heavy objects. He worked on derailments, freight car inspections, freight car repairs and yard inspection. One day, Romero along with two co-workers were summoned to a derailment. After an hour of rerailing a train, one of the co-workers mentioned to Romero that Romero did not look well. Romero refused any medical attention. Two days later Romero was hospitalized after suffering a coronary occlusion. He died five days later. Plaintiff alleged that the defendant railroad was negligent on six claims. Conrail, in its motion for summary judgment, addressed only the sixth claim. In her sixth claim, plaintiff complained that her decedent was forced by defendant railroad to work "in a job full of pressures, hard work and long

hours, and then refused to change his assignment to less demanding work." In rejecting this claim, the Romero court stated that "there is no question that the work of a freight carman is hard physical work and that occasionally Romero had to work overtime. But Romero's standard hours were Monday through Friday, 7:00 a.m. to 3:30 p.m. In addition, when Romero's work situation was described to Dr. Meyers he stated that Romero was 'just an average man with average stress in a world where there is stress all around us.'" Had plaintiff's complaint for negligence been merely one for the pressures, stresses and demands that are attendant to the job of train dispatcher, the Romero decision might be appealing. However, plaintiff has already acknowledged that the position of train dispatcher is demanding and contains pressures. Instead, plaintiff contends that, beginning in 1983, the aforementioned additional responsibilities of the Conrail train dispatcher made the position so overly stressful and demanding that plaintiff was forced to work in an unhealthy environment. We, therefore, find the situation in Romero, distinguishable from the one sub judice.

Conrail has also cited two cases which hold that there generally can be no recovery for emotional disturbance under the FELA without some precipitating physical injury. Bullard v. Central Vermont Ry., 565 F2d 193 (1st Cir. 1977); Moody v. Maine Central Railroad Company, C.A. No. 84-0415-P (D. Maine, November 6, 1985). In Bullard, the plaintiff was not allowed to recover

for fright and mental anguish resulting from the death of one of his co-workers. In Moody, plaintiff was not allowed to recover for mental anguish resulting from harassment.

In the case sub judice, however, plaintiff does not seek recovery merely for emotional disturbance under the FELA but, on the contrary, seeks recovery for a rather severe physical injury (myocardial infarction). Plaintiff has alleged that the mental pain he has suffered has been the result of this myocardial infarction. Therefore, we do not find the Moody and Bullard cases to be relevant.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD BARKER

VS.

CONSOLIDATED RAIL CORPORATION :

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C.A. NO. 85-5304

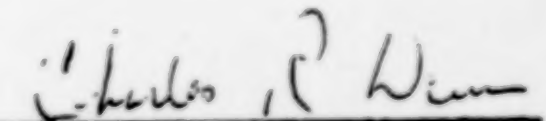
JANUARY 24, 1986

ORDER

The motion of the defendant, Consolidated Rail Corporation, for summary judgment is DENIED.

Trial of this matter is scheduled for Monday, March 3, 1986, at 9:30 a.m., in Courtroom 6B, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania.

IT IS SO ORDERED.



CHARLES R. WEINER

REPORT NO. FRA-ORD&D-74-37

AN ANALYSIS OF THE JOB
OF RAILROAD TRAIN DISPATCHER

D. B. Devoe

APRIL 1974
FINAL REPORTDOCUMENT IS AVAILABLE TO THE PUBLIC
THROUGH THE NATIONAL TECHNICAL
INFORMATION SERVICE, SPRINGFIELD,
VIRGINIA 22151Prepared For
DEPARTMENT OF TRANSPORTATION
Federal Railroad Administration
Office of Research, Development and Demonstrations
Washington DC 20591

scheduled for the busy part of the day, with a principal duty of keeping up with developments at two CTC boards and relieving the train dispatchers as required. This practice permitted relief breaks and lunch breaks for those two dispatchers. Such an arrangement is rare, however, and would be costly in a large office.

5.3 STRESS

5.3.1 Responsibility and Liability

The train dispatcher is responsible for the safe and efficient movement of trains. Failure to do his job properly can result in delays in delivery of goods, damage, spoilage or destruction of perishable goods, damage or destruction of railroad equipment and property, and even human injuries and loss of lives. Such eventualities are costly (and could be disastrous) to the carrier, and the accompanying penalties are correspondingly severe. So the train dispatcher goes about his complex job aware that a slipup--a bad decision, a broken rule, etc.--can have dire consequences both for himself and others. Even if his mistake does not cause great damage or deaths, he is subject to loss of his job.

5.3.2 Operational Factors

Unfortunately, the interests of business and safety are not always compatible. Delays incurred because of excessive caution on the part of the dispatcher cause delays in delivery of goods to customers. Furthermore, delays increase the risks of spoilage of perishables, loss of lading through pilferage, and damage through vandalism. On the other hand, accidents, losses and damage resulting from the breaking of rules to speed up deliveries are also hazards faced by the train dispatcher; so that he often must choose between equally undesirable alternatives in decision-making. Claims are often heard that supervisory pressure is not always in the interests of safety.

Many of the daily decisions made by train dispatchers involve such conflicts. And the decisions must be made almost instantaneously--there is no time for deliberation, for careful weighing of

alternatives. The operating rules and other documents provided for guidance are often difficult to understand. They may be poorly worded, poorly organized, ambiguous, and even conflicting. The National Transportation Safety Board has urged the Federal Railroad Administration to attempt to improve and standardize railroad operating rules (NTSB, 1971), and the FRA has commenced a program with these objectives. (See Appendices B - P for typical rules relating to dispatching functions.)

Most people faced with the necessity of making frequent, quick, unsatisfactory decisions with severe penalties for mistakes become tense and anxious. So the basic nature of the train dispatcher's job is stressful.

5.3.3 Requirement for Memory

Despite the display boards, train sheets, train order books, train consist reports and other reference materials, the train dispatcher must rely heavily on his memory to maintain an up-to-date comprehension of the status of his operation (see Section 5.5.2). Forgetting is a human characteristic, and it is aggravated when the material to remember is detailed and complex. The train dispatcher adds to his job tension by his continual awareness of the consequences that could ensue from forgetting a critical detail.

5.3.4 Environmental Factors

The nature of the working environment (see Chapter 3) usually contributes to the stress of the train dispatcher's job. Crowded, noisy, uncomfortable working quarters, frequent interruptions, numerous sights and sounds competing for attention--all these conditions militate against thoughtful assembly and analysis of data, arriving at critical decisions, and acting on the decisions. This incompatibility of the job environment with the job demands serves to add to the tensions and anxieties experienced by the dispatcher.

5.3.5 Medical Consequences

The continual psychological stresses of the job may have serious adverse effects on the health of train dispatchers. Statistical summaries of the medical problems of train dispatchers are rare, and it is difficult to evaluate those that do exist because of the small numbers sampled. The following summary is derived from data provided by the American Train Dispatchers Association.

In 1929-30, a ten-month study of the mental health and physical health of 165 train dispatchers led to some disturbing conclusions. As a group, train dispatchers showed an exceptionally high incidence of optical nystagmus (a jumping of the eyes that reflects fatigue, attributed to frequent scanning of train sheets), deafness (attributed to the then-common use of headphones), diseases involving the heart, blood vessels and kidneys, and a group of symptoms usually associated with neuroses and anxiety states. The average age at death was 50 years, with an exceptionally high rate of deaths due to cardiovascular disease. These conditions were attributed to "...the stress and strain incident to the rate at which some train dispatchers are called upon to perform their duties." Although this study was conducted over forty years ago, working conditions at many positions have changed little. Train sheets are still in use, although they are now generally printed on green or buff paper to reduce eyestrain due to glare. Speakers have been substituted for earphones (although we have noted a return to earphones in the new D&RG system, Section 3.3.4). Perhaps traffic volume has decreased overall, but consolidation and centralization have increased the workload for many dispatchers, and the general increase in speed and length of trains has not made decision-making any easier for dispatchers today.

Later sets of data (1941-1950 and 1951-1955) showed a median age at death of about 57 for train dispatchers, as compared to a median of 65 for the general population of white males over age 25. About half of the deaths of train dispatchers in the latter sample were attributed to heart disease and another 20 percent involved blood vessels.

In a five-year follow-up study of coronary heart disease (CHD) among railroad workers, the investigators found an exceptionally high incidence of cigarette smoking among the train dispatchers and an excessive number of deaths from CHD (Taylor et al., 1970). The number of cases is too small to have statistical significance, but the figures are consistent with the findings of the earlier studies.

These studies, the complaints heard during our present survey, and our observations all cause us to conclude that the stress associated with the performance of train dispatching duties as they are now carried out is real, severe and potentially damaging to the physical and mental health of the dispatchers. The 1930 analysis concluded that "... the high percentage of mental disorders, including anxiety states and fatigue, are particularly prone to mental lapse favoring errors in the movement of trains." This potential appears to persist today and must be given attention in any program on railroad safety.

5.4 PRESENTATION OF INFORMATION

5.4.1 Basic Aids

The train dispatcher must base most of his decisions on a prediction of the dynamic status of his territory at the time his decision becomes effective. The effectiveness of his decisions, especially the safety of the operation, depends on the timeliness, accuracy and accessibility of the data furnished him and his skill in locating, integrating, and extrapolating the data.

To assure timeliness, as much information as possible is prepared in advance in the form of rules, timetables, bulletins and the like. A major reason for all of the communications aids is to permit information on progress and on changes to reach the dispatcher with a minimum of delay.

To assure accuracy of information, elaborate, repetitive checking procedures have been established for communicating train orders and clearances. CTC boards have built-in checks, such as out-of-correspondence lights.

To assure accessibility of data, train orders are numbered consecutively and lined out when they expire.

Some provisions are made to help the train dispatcher organize his information into a pictorial representation of the current status of his territory. Sections of the train sheet are arranged with a printed list of stations on the route, in geographical order, with a separate column for data on each individual train and with space for the orderly entry of the time at which each train passes each station. CTC boards always include a schematic diagram of the trackage under control, with occupancy lights showing the last-sensed position of each train in the system. CTC graphs, when marked by the dispatcher, give a concise picture of current status of traffic and how it has moved in the past.

Relatively few aids are provided to assist the train dispatcher in prediction of future status of his territory. He can deduce future conditions from the data entered in the train order books. CTC indicators show some of the provisions he has made for routing trains in the immediate future. And he can use his communications to ask other people in the system for predictions. In general, however, the train dispatcher must create and exercise his own mental model of the status of his system, present and future, to determine what actions are required to maintain a safe and efficient flow of traffic.

5.4.2 Inadequacies in Aids

The principal weaknesses in the train dispatcher's aids are the lack of timeliness and the lack of organization of the data. The latest information that a train dispatcher normally has on the location of any train in his territory is the time at which it passed the last reporting point or station (train, or OS, report). The dispatcher usually receives this information as a phone report from an operator at the field location or as the illumination of a track occupancy light on the CTC board. In either case, he must immediately enter the time manually on his train sheet. Communications difficulties can cause delays in the transmittal of OS reports by phone. If the train dispatcher is very busy, he may

sometimes miss a change on his CTC board. In spite of these possibilities, train sheets are generally accurate and up-to-date.

Affecting timeliness to a greater extent is the lack of routine progress or status reporting from trains between OS points. If a train is slow, or stopped, in a long block, the dispatcher has no knowledge of its exact location, nor of its probable arrival time at the next OS point. Multiply this uncertainty by the number of trains in the system at one time, and you can appreciate the lack of precision in the information the dispatcher may have on which to base his extrapolations. Of course, he can call trains by radio if he notes an undue delay, but many times radio communication is uncertain, due to terrain (train in cuts or tunnels) or to malfunctioning equipment. Furthermore, the train crews may be attending to some train malfunction and may not be available to respond to the dispatcher's call.

The organization of information at a train-order position is far from ideal. To determine current status, the dispatcher must scan one or two train sheets, with the information relevant to his problem possibly scattered over several locations on the sheet. In addition, he must review special permits (these may be on the train sheet, on separate forms, in a train order book, in his memory or notes, or in combinations of these locations). To predict future status he must mentally estimate speeds, check provisions of train orders, check bulletins and notices, check or remember timetable provisions, and integrate all of this information.

The CTC board integrates some status information and displays it on a schematic layout of the system. However, the dispatcher must still integrate the block-occupancy data on the board with train identification on the train sheet to be sure which train has caused the indicator to illuminate. The CTC graph, when available, can give a much better picture of status if the dispatcher keeps it current by drawing in and labelling the connecting lines representing trains.

None of these aids give the dispatcher much information on future status. Some of the better CTC boards now illuminate the established routing so that the dispatcher can see where a particular train is headed. Beyond that, the dispatcher must rely on his imagination to picture the future situation and to guide his issuance of orders and permits.

5.4.3 Trends Toward Improvements

Railroads are continually exploiting new technology, and many developments provide help to the train dispatcher.

Improvements in radio communications permit the dispatcher to receive and send more information, between more locations, more rapidly and clearly. One plan for extending and expanding the use of radio communications has been proposed by Bakeman (1972). Essentially, he would rely completely on formal radio clearances directly to train crews at successive control points, similar to air traffic control operations. Front and rear markers for each train would be manually advanced on a magnetic status display of the trackage, and a magnetic tape record of all radio transactions would be maintained. This proposal would relieve the dispatcher of the necessity to maintain train sheets and train order books, leaving him free to concentrate on the actual movement of traffic. Several similar systems have been successfully put into operation on a small scale. Of course, maintenance of radio equipment and strict observance of radio communications procedure are of primary importance in such systems.

A number of techniques have been proposed or developed for automatically identifying trains at OS points. Some devices read a code from the passing train and radio the information along with sensor-point identification to a central data collection point. Another approach is for the train to sense a locator or beacon interrogator as it passes and for the train to relay positional information via its radio. In either case, the ultimate advantage to the dispatcher is that the OS time is automatically combined with train identity, relieving him of that frequent, time-consuming function.

We have already noted the trend toward the use of computers to automate train dispatching functions (Section 3.3.4). Systems now in being simplify route selection, maintain OS records automatically, search for, retrieve and display information on demand, and prepare reports. One system eliminates train sheets. Another, in development, will eliminate both train sheets and train orders, providing a display in each locomotive cab that shows current clearance data. Complete automation of train dispatching is a possibility, although we have no knowledge of any such systems under development.

5.5 SUMMARY

The principal problem affecting the job of train dispatcher today is the continual stress associated with controlling train movements safely and efficiently. The degree of responsibility, the conflict between the interests of safety and good business, the complexity of the operation, and the frequency of occurrence of operational problems keep the dispatcher at an undesirable level of tension and anxiety throughout his work period. This situation is often aggravated by inadequacies in the availability and organization of information, malfunctions and delays in communications, crowded, noisy, uncomfortable and distracting working conditions, the burden of unnecessary duties (particularly paperwork), excessive workload, and conflicting pressures from superiors.

There is some indication that the stresses of the train dispatcher's job are injurious to his physical and mental health, and therefore also incompatible with operational safety. More information is needed on this critical aspect of the job.

Two areas where modern technology can be applied to relieve the train dispatcher's job stresses are in the increase in detail and timeliness of status information and in the reduction of paperwork. Much has already been accomplished in these areas. However, such developments are slow and costly, and we can not expect any widespread changes in the nature of the train dispatcher's job in the near future. In the meantime, continuation of the trends

toward sound-shielding, air-conditioning, and separating dispatcher positions, simplifying necessary paperwork, eliminating unnecessary paperwork and improving and maintaining communications facilities will help reduce job stresses, improve the effectiveness of the dispatcher's job performance, and promote operational safety.

6. PERSONAL ATTRIBUTES OF TRAIN DISPATCHERS

The purpose of developing this detailed account of the job of train dispatcher is to assemble a data base as guidance for the determination of needs for standardization and regulation in the interest of safety. Some of the products to be derived from this information are basic physical and psychological attributes consonant with safe train dispatching, basic job knowledge and skills necessary for effective job performance, means for evaluating job proficiency, means for selecting potentially successful train dispatchers, and the basic training required to qualify a candidate to assume the duties of a train dispatcher. In other words, we are looking for answers to the following questions: What kind of person, physically and psychologically, makes a good train dispatcher? What skills and knowledge does he need to perform the job? How can we test whether a person possesses these qualifications? How can we select candidates most likely to make good train dispatchers? How can we best train them?

This report provides raw data for determining answers to these questions--not the answers. However, to provide a framework for the derivation of selection, training, performance and testing criteria, we shall make some tentative hypotheses based on the present study.

6.1 PHYSICAL ATTRIBUTES

6.1.1 General Attributes

An earlier report in this project (Devoe, et. al., 1972) included train dispatchers in a category characterized as critical with regard to safety hazard potential, but minimal with regard to physical demands and exposure to weather.

The train dispatcher is not required to perform heavy physical labor and is not exposed to extremes of weather and terrain. Many physical disabilities can be tolerated since the job is sedentary. Normal vision is required for reading, writing, and monitoring the

CTC board, but deficiencies are tolerable provided they can be corrected artificially (as with eyeglasses). Acute hearing is necessary, especially because of the poor quality of communications systems in many operations. Further study is needed to determine whether hearing aids are adequate to overcome hearing deficiencies when phone and radio messages are deteriorated.

6.1.2 Special Precautions

Our review of the impact of job stresses on the train dispatcher's health (Section 5.4.5) suggested that train dispatchers as a group, tend to die younger than the general population in their age group, with the principal causes of death being coronary heart disease and cerebrovascular disorders. Complaints of ulcers and other disabilities associated with anxiety states and fatigue are frequent among train dispatchers. Although more research is needed to substantiate these findings statistically, certain precautions are indicated in the physical evaluation for selection and monitoring of train dispatchers.

Persons with a history of cardiovascular problems or psychosomatic disorders should not be selected for work as train dispatchers. Although these people might function effectively, the chances are high that the stresses of the job would aggravate their conditions and, in the long run, would be detrimental to their well-being.

In spite of the minimal requirement for physical labor, the job of the train dispatcher is fatiguing. To the extent possible, dispatcher candidates should be screened for susceptibility to fatigue. Before clearcut physical criteria for stress tolerance can be established, however, research is needed on the relationship between general health and tolerance of fatigue as well as on the relationship between workload and fatigue.

6.1.3 Current Practices

The only physical requirements for the job of train dispatcher that we found in our survey are described in the following excerpt

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS J. CARROLL : CIVIL ACTION
v. :
CONSOLIDATED RAIL CORPORATION : NUMBER 89-4650

AFFIDAVIT OF J. MICHAEL FARRELL, ESQUIRE

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF PHILADELPHIA : SS

J. Michael Farrell, Esquire, being duly sworn according to law deposes and says:

1. I am an attorney at-law in the Commonwealth of Pennsylvania and a member in good standing of the U.S. District Court for the Eastern District of Pennsylvania and am counsel for Plaintiff in the above matter.

2. At my request, the Federal Railroad Administration forwarded to me a complete copy of United States of America, Department of Transportation Federal Railroad Administration- April 1974 report, "An Analysis of the Job of Railroad Train Dispatcher".

Said report states that the "continual psychological stresses of the job may have serious adverse effects on the health of train dispatchers". *Id.* at page 155. A section of the report identifies the operational factors associated with said stress and concludes that "the stress associated with the performance of train dispatching duties is real, severe and potentially damaging to the physical and mental health of the dispatchers...this potential appears to persist today and must be given attention in any program on railroad safety". *Id.* at 157. The factual findings as well as conclusions of this report are admissible in the instant case to demonstrate that the railroad was on notice of the foreseeable hazards associated with the stress of the performance of train dispatching duties. Further, the findings and conclusions of the study are substantively admissible as a government publication. *Rainey v. Beech Aircraft, Inc.*, U.S. (1988). (See attached as Exhibit "A" and incorporated herein as if set forth herein verbatim cover page and pages 154 through 164 of said report).

3. Pursuant to my request, the Federal Railroad Administration forwarded to me a complete copy of its "1987 Safety Assessment Consolidated Rail Corporation". In the 1987 Safety Assessment of the Eastern Region specifically the Philadelphia Train Dispatcher's office, the office in which all four of the plaintiff's that the office environment is disrupted by shouted instructions, monitored transmission from radio loudspeakers and transmissions from wayside detectors. *Id.* at 59. The study further found that "workload factors on both desks are sufficiently high to warrant immediate corrective action by Conrail". *Id.* at 60. Moreover, the Assessment found that "there is insufficient staff of extra board dispatchers to provide relief for vacations, personal emergency and sickness". *Id.* at 60. (See attached hereto as Exhibit "A" the cover page and pages 1.

4. Depositions of Donald Williams, Richard Barker, William Kraus, Ronald Shoemaker, Wayne Owens and Charles Barber, respectively, for FELA actions by train dispatching office and whose injuries were based on the same liability theory resulting from unsafe work conditions and failure to take adequate steps with respect to the foreseeable hazards associated with the stress of train dispatching. Mr. Williams had a nervous breakdown; Mr. Barker had a heart attack; Mr. Kraus had a nervous breakdown and blackouts; Mr. Shoemaker also had a heart attack; Mr. Owens has stress-induced ulcers as did Mr. Barber. The depositions of these individuals are attached hereto as Exhibits "B", "C", and "E" through "H", respectively. Said depositions are admissible in the foreseeable medical hazards associated with their failure to take reasonable precautions to reduce the stress in the control center in the Philadelphia Division of the Eastern Region of Conrail.

5. On January 27, 1986, Judge Weiner of the U.S. District Court for the Eastern District of Pennsylvania issued a memorandum opinion and order denying Conrail's motion for summary judgment in the FELA heart attack case of Richard Barker vs. Conrail, Civil Action No. 85-5304. (See attached hereto as Exhibit "D" a copy of Judge Weiner's memorandum opinion and order).

6. Upon information and belief, the attached documents will be admissible in the trial of the above case for the reasons identified with respect to each individual document:

(1) 11/17/84 memo from C.A. Ross concerning procedures to mark off sick

(2) 3/7/85 memo from Tarzo with regard to rocket fuel and

here concoction for the purpose of increasing productivity levels as evidence of Conrail's awareness of train dispatcher complaints of excessive work.

- (13) July 1985 note from R. Shoemaker to D.L. Wilson with copy to Mr. McPherson of the ATDA complaining as to the inadequacy of the computer training
- (14) Notice of investigation dated 8/1/85 to R. Shoemaker
- (15) Notice of hearing dated 9/3/85 to Donald H. Williams
- (16) 9/13/85 letter from Wayne Owens to Marlin Swartz
- (17) 9/24/85/ letter from W.A. Clifford to Donald Swanson concerning abolishment of one assistant chief train dispatcher per shift
- (18) M.A. Swartz letter dated 9/26/85 to Wayne Owens
- (19) 10/12/85 letter from J.R. McPherson to Charlie Ross concerning a formal complaint that Asst. Chief Dispatcher "D" Desk was overloaded
- (110) 10-10-85 letter from W.A. Clifford to Donald Swanson concerning conditions in Philadelphia train dispatching office
- (111) 10/25/85 letter from J.R. McPherson to M.A. Swartz
- (112) Conrail memo dated 11/11/85 re: Erroneous TSN Reporting
- (113) 11/17/85 letter from W.A. Clifford to Mr. G.F. Belt filing a formal complaint that Asst. Chief Train Dispatcher "D" Desk was overloaded
- (114) 12/8/85 letter from W.A. Clifford to R. Johnson concerning Phila. train dispatching office
- (115) 3/12/86 letter to R. Johnson concerning the closing of Jersey tower and the transfer of all duties of this tower to train dispatcher desk "B" resulting in excessive work on that desk
- (116) 3/18/86 letter from R. Johnson to O.F. Stewart re: added duties and responsibilities of train dispatchers in Conrail Phila. office
- (117) 4/26/86 letter from O.F. Stewart to D. Wilson complaining that "the addition of duties and responsibilities to

Desk "B" of the Phila. office would be detrimental to the health and welfare of any train dispatcher required to perform these duties and will make for unsafe operation"

- (118) Wayne Owens letter dated 5/20/86 to C.A. Ross
- (119) Letter of O.F. Stewart to D.L. Wilson dated 6/26/86 complaining of safety compromise
- (120) D.S. Wilson letter to O.F. Stewart dated 7/3/86
- (121) 9/3/86 letter from O.F. Stewart complaining of elimination of train dispatcher positions and consolidation jobs resulting in excessive work
- (122) 9/4/86 memo re: Train Collision Youngstown
- (123) 9/4/86 letter from D.L. Wilson to O.F. Stewart indicating Conrail's intent to incorporate all of present Desk "B" territory into Desk "C" and to transfer the Norrisville line from Desk "C" to Desk "A"
- (124) Memo from R. Irwin to G.J. Nixon instructing him to send a draft of Complaint concerning working conditions in Conrail train dispatcher's office to Owen Stewart with followup letter 12/15/86 with attached draft
- (125) C.A. Ross note to R. Shoemaker dated 1/27/86 denying work time
- (126) 2/2/87 letter from Michael F. Chr to C. Barber reprimanding him for train movement and threatening severe actions if future failures occur
- (127) 2/9/87 notification of consolidations of Desk "B" and Desk "A" effective 2/16/87
- (128) Note from R. Shoemaker date 2/10/87 to C. Hurley
- (129) Notice of investigation dated 2/6/87 to W. Bauner
- (130) 2/25/87 memo from D.L. Wilson for distribution denying vacation to be taken in single days
- (131) C. Hurley letter to D.L. Wilson re: Combining Territories Desk "A" and Desk "B" with attached bulletins advertising combination of A & B Desk jobs
- (132) J. Michael Farrell letter dated 4/7/87 to R.E. Stewart re: Wayne Owens

(33) R.E. Stewart letter dated 4/13/87 to J. Michael Farrell

(34) R.E. Stewart letter dated 6/29/87 to J. Michael Farrell

(35) Formal complaint dated 5/5/87 that present Desk "B" train dispatcher position is overloaded

(36) 11/14/87 letter to R. Shoemaker from R.E. Sizmur warning that future absenteeism may result in formal discipline

(37) 12/15/87 Conrail memo concerning reporting problems in TMS Nov. 1987

(38) 1/18/88 letter from Richard Hasselman to co-workers Wayne Kehler concerning Conrail's denial of single vacation days in the Phila. division train dispatcher's office

J. Michael Farrell

Seen to and Subscribed
before me this _____ day

of _____, 1989

Notary Public

November 17, 1989

(Assistant Chief Dispatchers)
Train Dispatchers
Control Center

Effective immediately when marking off sick, a doctor's slip must be furnished prior to returning, in addition to a phone call marking back up for duty.

-Also all mark off's will be made thru the Assignment Clerks Office. At night, weekends and holidays, calls must be personally handled by the S.T.O. or A.S.T.O.

Absentee Records will be reviewed, and in some instances may result in a Medical Evaluation being made by our Company Physician.

Be governed accordingly.

C.A. Ross

cc - V.L.T.

W.A.B.

A.S.T.O.'s

Joe Ciracci - Per our conversation, we will review monthly.

CONRAIL

TO DISTRIBUTION

FROM V.L. TERZIU

DATE March 7, 1985

SUBJECT

You've heard of Spring Tonics...I think it's time that we all took heed and gave some serious thoughts to the problems we have at hand.

If you think we have problems right now, you haven't seen anything yet. As an assist to get everybody paying attention, attached is an advertisement that you might give serious consideration to for the purpose of increasing your productivity levels.

Attachment.

DISTRIBUTION

W. A. Beemler
C. A. Rr + 4
J. S. Dunn + 5
G. M. Homer
C. B. Turek
F. J. Hasson
T. Hardin, Jr.
Trainmasters
D. J. Evers + 5
H. Provenzano + 5
N. J. Nass
D. J. Vitalo
J. F. Finnerty, III
M. D. Jimerson
E. E. Leisey
R. L. Knittle
S. E. Sateja
T. F. Lapergola

Sexy new idea for people who think young!

ROCKET FUEL

Energy. Everyone wants more of it. Everyone needs more of it. If only we could increase the vital life force which energizes the body—the vital force that flows through the centers of energy within the body/mind system which correspond to the various organs, glands, and nerve plexuses.

That's the whole idea behind Rocket Fuel—9 different and uniquely combined herbs that are known for their ability to increase and enhance the flow of energy in the body/mind system. Users have already hailed it as the "ultimate energy fuel" and "the sexiest new idea yet."

Experience this new energy formula for yourself. Rocket Fuel is not a "wait and see" preparation.

It produces an almost instant effect. Contains Bee Pollen, Ginseng, Gotu Kola, Fo-Ti, Sarsaparilla, Licorice, Damiana, Ginger and Cayenne—all in fluid extract form for rapid assimilation. Available at leading health food stores from coast to coast.

Your body
deserves the best



Health From The Sun

P.O. Box 471, Dover, MA 02034

MR D L WILSON
MR J MCPHERSON

SUPT.
A.T.D.A.

A-42

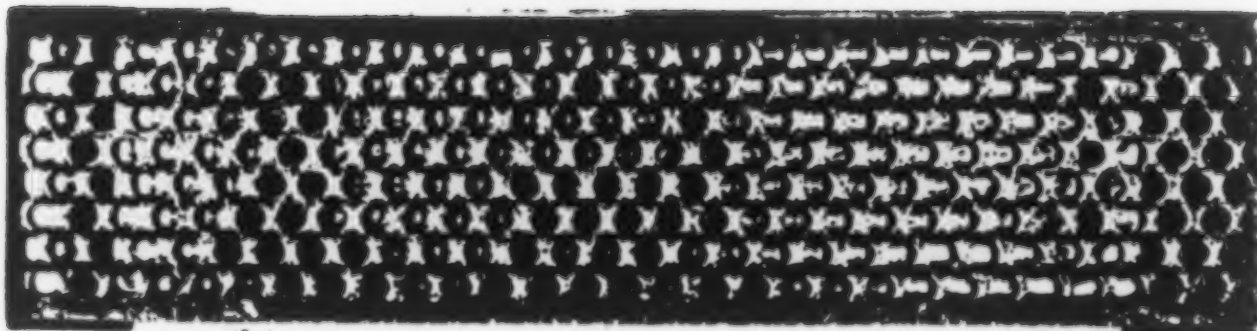
THIS IS TO INFORM YOU THAT I, PERSONALLY, DO NOT FEEL THAT ONE HOUR POSTING ON THE NEW COMPUTER SYSTEM, A HIGHLY SOFISTICATED PIECE OF EQUIPMENT, IS SUFFICIENT TRAINING TO ENABLE ME TO DISPATCH IN THE SAFE AND EFFICIENT MANNER TO WHICH I AM ACCUSTOMED AND TO WHICH, I AM SURE, CONRAIL EXPECTS ME TO OPERATE. I RECEIVED ONE HOUR POSTING ON JULY 6 FOR THIS NEW SYSTEM WHICH DOES NOT GO INTO EFFECT UNTIL JULY 15. WHAT WITH THE ADDITIONAL DUTIES THE DISPATCHER WILL NOW HAVE, SINCE THE CLOSING OF BRIDGE 3 COINCIDES ON THE SAME DAY, I FEEL I CAN NOT ACCEPT ANY RESPONSIBILITY FOR ANY DELAY OR INCONVENIENCES WHICH MAY INCUR UNTIL THAT TIME WHEN I AM FULLY QUALIFIED AND AT EASE WITH THIS NEW SYSTEM. SAFETY AS USUAL WILL BE MY FIRST CONCERN.

THANK YOU

Ronald G. Shoemaker
R G SHOEMAKER RELF DISP C

COPY O STEWARD

7/95



A-43

G-250-OTE (New) 3-83

Notice of Investigation trial or hearing

CONSOLIDATED RAIL CORPORATION

August 1, 1985
Date of Notice

TO: Ronald G. Shoemaker Train Dispatcher
Employee Name Occupation
26 Wilton Way Sicklerville, NJ 08081
Address
You are to attend a ☒ Investigation, ☐ Trial or ☐ Hearing
at 3460 N. Delaware Avenue Phila., Pa. 19134
Location
on Tuesday August 6, 1985 at 9:30 A.M.
Day Date Time

in connection with the following:

While working as Train Dispatcher Desk C issuing Form W Train Order and completing same at 6:42 A.M., July 30, 1985, while train Mail-9 engine 5029 was operating within limits specified in Form W Train Order.

Violation of General Notice page, General Rule B and Rule 903 of Conrail Rules of the Transportation Department.

You may arrange to be accompanied by a representative as provided in your collective bargaining agreement. You may produce witnesses on your behalf, without expense to the Company, and you or your representative may cross examine witnesses.

W. A. Beemler 3460 N. Delaware Avenue
Signature of Company Official Address of Company Official
Asst. Supt. Phila. Division
Title

NOTE: Send by U.S. Certified Mail, Return Receipt Requested, or personal delivery.

COPY TO: John R. McPherson
Union Representative

This acknowledges receipt of notice dated _____
requesting me to attend a formal proceeding on _____
Date

Date Notice Received

Employee Signature

CONRAIL

A-44



PHILADELPHIA September 5, 1985
(Location) (Date)

Mr. Donald H. Williams Employee # 867143
Train Dispatcher
(Occupation)

Dear Mr. Williams

Notification is hereby given that you will be held
out of service beginning 9:00 P.M. September 4, 1985
(Time and Date)

Pending trial and decision, in connection with failing
to notify train WPCA-31 that crossing protection North of CP-Brown
was inoperative.

You will be advised subsequently the specific
charge or charges on which you will be tried.

W. A. Beemler
(Signature of Officer)

Asst. Superintendent
(Title)

CONSOLIDATED RAIL CORPORATION

A-45

G-250-OTE (New) 3-83
Notice of investigation
trial or hearing

Certified Mail P33 9734785

CONSOLIDATED RAIL CORPORATION

September 5, 1985
Date of Notice

TO: Donald H. Williams Train Dispatcher
Employee Name Occupation
945 3 Mile Run Road Sellersville, Pa. 18960
Address

You are to attend a ☐ Investigation, ☐ Trial or ☒ Hearing

at 3460 N. Delaware Avenue Phila. Pa. 19134
Location

on Tuesday September 10, 1985 at 9:30 A.M.
Day Date Time

in connection with the following: Your failure while working as Train Dispatcher Desk "B"
to notify Train WPCA-31 Engine 1684 that crossing protection was inoperative at
Chelton Ave., Van Hook St., Ferry St., Camden, New Jersey at approximately 1:50 P.M.
September 4, 1985 and instructing Block Operator J. Johnstone to clear signal
at CP-Brown for WPCA-31 to proceed.

Violation of General Notice Page 1, General Rule B, Rule 103b, 904, and 905,
Conrail Rules of the Transportation Department.

You may arrange to be accompanied by a representative as provided in your collective bargaining agree-
ment. You may produce witnesses on your behalf, without expense to the Company, and you or your
representative may cross examine witnesses.

W. A. Beemler 3460 N. Delaware Ave. Phila. Pa. 19134
Signature of Company Official Address of Company Official
Asst. Superintendent, Phila. Div
Title

NOTE: Send by U.S. Certified Mail, Return Receipt Requested, or personal delivery.

COPY TO: John R. McPherson
Union Representative

This acknowledges receipt of notice dated _____
requesting me to attend a formal proceeding on _____
Date

Date Notice Received

Employee Signature

Marlin Swartz
General Chairman
American Train Dispatchers Assoc.
597 Lagare Road
Enola Pa. 17025

Sept. 19, 1985

OFFICE CONDITIONS - CONRAIL
PHILA.

SEP 27 1985

AM

7.8.9.10.11.12.1.2.3.4

Dear Brother Swartz:

We Train Dispatchers on the Philadelphia Division of Conrail are in dire need of the assistance and aid of our A.T.D.A..

Conrail has taken on a course of operation which has resulted in adversley affecting the health and well-being of the Train Dispatchers within our office, which is evidenced by the fact of within the last year, one of our train dispatchers- R..J.Barker is now perminately disabled due to a very severe heart attack, one of our train dispatchers just last week spent two and one half days in the intensive care unit of a hospital because of a near heart attack or stroke, one of our train dispatchers are dependant on daily medication to regulate his heart rate, while other train dispatchers are now in need and in fact taking daily medication for high blood pressure.

The root cause to our vary severe problems is BURESS, caused by Conrails actions, which I will now expand upon.

1. While the Region office instructs us daily to be accurate in putting times into the TMS computer, and further instructs us "NOT TO LIE"-- our Div. Supt., Asst. Div. Supt. and all Supervisors instruct us to lie passing times, delay causes or any other information into the computer that would make the Philadelphia Division look bad; in fact if any dispatcher should refuse to lie, he is to expect his work to be extremely scrutinized with always the threat of a hearing and investigation based on this close scrutiny. Most dispatchers find it easier to go along with the lying, than buck the system.

2. We are told to lie on the train sheets. I have refused todie, only to have the Supervisors call the towers and instruct them to falsify times to me in order to "keep schedule".

3. The safe operation of train movement has been compromised in order to "keep schedule".

Example no. 1. Trains with reported "squeelers" have been ordered by the Supervisors to keep moving to the next crew change point in order to "keep schedule".

Example no. 2. Trains with inoperative radio's on the lead unit have requested to "turn their units" so as to have an operating radio, and in those cases where schedule is not the issue, Supervision has refused the request because - "Conrail is not in the business of satisfying crews".

Example no. 3. Trains are operated without consists leaving the Train Dispatcher unaware of any special routed cars- i.e. excessive dimentions - or the location of dangerous cars in the train.

Example no. 4 After contractors had finished working within phoenixville tunnel, they left behind a piece of metal hanging from the roof of the tunnel - of unknown weight or thickness - .. the only report we had was that it would clear the top of Engines, but would strike excessive dimention cars, or piggy-backs. Supervisors instructed trains to proceed, and perhaps they would "knock it loose".

Example no. 5. Towermen at Morris unable to observe passing trains account of the dirt on the windows; in fact they report about an inch of dirt on all the windows, making it impossible to see outside. Phila. Div. Supt. given a written memo on this condition and he replied- "let the towermen clean the windows with a newspaper on the inside and let God take care of the outside". I requested of him to send cleaning materials to Morris as the towerman was willing to do the job, however the Supt. again replied that all that was necessary was a newspaper.

Example No. 6. Daily - literally daily - phone problems given to the trouble desk and the supervisors and on a regular basis to the Asst. Supt.. loud squeeling noises are intermittent followed by the inability of some towers to hear me at all, or others are being blasted out. Some towers are not connected to the train wire while others are connected but just plain don't work..

Example No. 7. Within the last 10 days I had a fire under a train which consisted flamable liquids, flamable gas, alchohol, flamable liquids, poison material corrosive material and combustionable material. This train was on the "High - Line" in philadelphia at Spring Garden Street. I had to argue with the Supervisor - to the point of telling him to take me out of service, over the point that I intended to move the train away from the fire... The fire was of such severity that it took the Phila Fire Dept. to put it out. The Supervisor wished to "keep schedule" and that and that alone was his reason not to move a train from a very dangerous position.

Brother Swartz, I have contacted A.T.D.A. President Johnson concerning these matters, and he instructed me to contact you immediately. We need your assistance now before we have more of our dispatchers disabled due to the stress we are under. We are working in a pressure cooker with no relief valve.

Sincerely

Wayne P. Owens

Wayne P. Owens
2546 South Holbrook Street
Phila. pa. 19142

Copy

R.E. Johnson



W. A. CLIFFORD, VICE PRESIDENT
TELEPHONE 817/877-4884

American Train Dispatchers Association

AFL-CIO and RLEA

188 WALNUT STREET, BROOKLINE, MA 02148

Sept. 24, 1985

Donald Swanson
Vice Pres.-Transportation
Consolidated Rail Corporation
6 Penn Center Plaza
Philadelphia, PA. 19103

Subject: Assistant Chief
Train Dispatchers- Phil., PA

Dear Sir:

On April 29, 1985 a bulletin was issued on the Philadelphia Division which abolished one Assistant Chief Train Dispatcher per shift. Prior to this notice there had been two Assistant Chiefs per shift.

On May 1, 1985 General Chairman Marlin Swartz of the American Train Dispatchers Association met in Philadelphia with Manager of Labor Relations P. Kublic, Assistant Division Supt. Beemler and Supervisor of Train Operations C. Ross. The Carrier at that meeting agreed to restore one (1) five day position on the first shift and to assign the work on this shift in the same manner as it had been performed before the bulletin of April 29th. However, when the job was restored the position was only assigned work connected with the Maintenance of Way program. This left the other Assistant Chief position on the first shift with an overload of work. The same was true on the second and third shifts where the remaining Assistant Chiefs had an overload of work.

On June 28, 1985 Mr. Swartz wrote to Mr. Kublic concerning the Carrier's failure to live up to the agreement reached on May 1, 1985. He has never received a reply.

Due to the complaint of our Organization concerning the work overload an in house job study was arranged by George Garrison of Conrail's Labor Relations department. This study was conducted on the second shift on July 11 and 12, 1985 by myself and Conrail's Manager of Rules Robert Quinn. At 10AM on the morning of July 11, 1985 Michael Ohr an Assistant Supervisor of Train Operations was removed from his position by Division Supt. Terziu. Mr. Ohr then exercised seniority rights and displaced the second shift Assistant Chief effective immediately. Therefore, Mr. Ohr was working the Assistant Chief position during the study of July 11 and 12, 1985.

It is my understanding that Mr. Ohr worked this position for about one week before going on vacation. When he returned from vacation Mr. Ohr returned to management in a higher position than previously held. The ATDA found this sequence of events very unusual.

At the conclusion of the two day study Mr. Quinn and I agreed that the remaining Assistant Chief position on the second shift had more work than one man could handle. Mr. Ohr was unable to

even have a sandwich, he had phone calls constantly backed up, and he was unable to supervise the Train Dispatchers in any manner.

In a later phone conversation Mr. Quinn told me that he had talked to the Division Superintendent and that Mr. Terziu was going to see if the paperwork on the job could be alleviated and Mr. Quinn requested that we look at the position again after this was done.

I agreed with Mr. Quinn's request and also told him that I wished to meet with Mr. Terziu on this matter. Mr. Quinn said he would set up a meeting. On August 8, 1985 I returned to Philadelphia and again studied the position with Mr. Quinn. There was no change in the position's work load. The occupant of the position on August 8, 1985 was Greg Johnson. Like Mr. Ohr he was unable to even have a sandwich, had phone calls backed up and was unable to exercise any supervision over the Train Dispatchers. I again told Mr. Quinn that I wished to meet with Mr. Terziu on this matter and he agreed to set up a meeting.

Mr. Quinn informed me by phone that a meeting was to be held with Mr. Terziu at 10 AM on August 23, 1985. Mr. Terziu did not show up for this meeting. Mr. Beemler the Asst. Division Supt. said he was on a hi-rail trip with Mr. Crane. However, Mr. Beemler said this trip was set up on August 19, 1985. There was no attempt made to contact me and Mr. Beemler said he was told the night before the meeting that he was to represent Mr. Terziu. Present at the meeting were Mr. Swartz, Mr. Quinn and Mr. Beemler.

I found the meeting to be astonishing. We told Mr. Beemler that on the second shift there was an Assistant Chief with a very heavy work overload. We also said that the ASTO on the second shift did not have enough work to do despite the fact that it was obvious they were attempting to perform functions reserved to the ATDA under our scope rule. In addition we pointed out that only one of the ASTO's was qualified on all the Dispatching Districts and that when a situation arose which required supervision of a Train Dispatcher the Assistant Chief was too busy to give this supervision and the ASTO's were not qualified to provide supervision.

During our job study on August 8, 1985 such a situation did occur and the ASTO on duty had to rely on the Division Rules Manager and Mr. Quinn who were both in the office.

We stated that we felt the ASTO positions should be made Assistant Chief positions on the second and third shifts. This would allow a more equitable splitting of the work and not leave one person beyond full capacity while another man did not have enough work.

Mr. Beemler then said that he did not believe the Assistant Chief was even working to full capacity and he also felt all the Train Dispatchers could be doing more. When I asked Mr. Beemler if he felt giving a person a management position meant that they would be more productive than a person working under an agreement he further astonished me by saying that only one ASTO was really doing a proper job.

I found Mr. Beemler's attitude annoying. In the course of a very brief meeting he managed to say that the incumbents of most positions we discussed were not doing their jobs properly. Nevertheless, he stated that the changes made by management had not brought any improvement.

At the conclusion of the meeting Mr. Beemler said that he would inform Mr. Terziu of our suggestions and we would receive a reply. We have never received a reply to this date.

I have gone to in house job studies in Buffalo and Chicago and formal studies in Columbus and Cleveland in the past two years. Until Philadelphia I had never had any trouble in discussing a matter with the Division Superintendent.

I would appreciate a meeting with you on this matter. My phone number is 617-286-2017.

Very truly yours,

William J. Clifford
Vice President-Northeast

cc: R.E. Johnson
M. Swartz
E. McKeown
G. Bent
V. Terziu
R. Quinn

American Train Dispatchers Association



September 26, 1985

American Train Dispatchers Association

 SEP 30 1985
 AM P
 7 8 9 10 11 12 1 2 3 4 5

 OFFICE CONDITIONS - CONRAIL
 PHILA.

 Mr. W. P. Owens
 2546 South Holbrook Street
 Philadelphia, PA 19142

Dear Brother Owens:

This in reply to your letter dated September 19, 1985, concerning conditions in the Philadelphia Office and requesting aid from the A.T.D.A..

Thanks for taking the time to write the letter Wayne and being concerned for our brothers in the office.

We are confronted with the problem of stress in every office on the System and have been attempting to have Conrail alleviate the problem to no avail.

Vice President Clifford has written to Mr. Swanson requesting that he meet with us concerning the Philadelphia Office, we are awaiting his reply.

In reference to lying in the TMS, if a Supervisor advises you to change the time, I would advise him that you were instructed not to lie time in TMS, but if he insists that you do, then I would put in the time he requests and make a notation for the record who ordered you to change or lie the time, otherwise, they might possibly charge you with insubordination, this is one of the items we are going to discuss with Mr. Swanson.

If the movement of trains involves safety, I would bring this to the attention of the Supervisor and also advise him that you think it unsafe to make move, if he then instructs you to make the move, advise him that you will make the move under protest and make a notation of time and person ordering you to make the move.

We expect to discuss the phone problems with Mr. Swanson also.

Stress is a contributing cause for heart attack and the type of work we perform causes stress and is a contributing factor conducive to heart attacks. We are and will continue to attempt to have Conrail relieve as much stress as possible concerning our duties.

 Fraternally yours,
 M. A. Swartz
 M. A. Swartz
 General Chairman

 cc: R. E. Johnson, President
 W. A. Clifford, Vice President
 E. S. McKeown, Vice General Chairman

 MR. C. A. ROSS
 SUPER. TRANS. OFFICER

OCT. 12, 1985

37/79 Philadelphia - CC

DEAR SIR:

THIS IS TO BRING TO YOUR ATTENTION, PURSUANT TO THE PROVISIONS OF THE NATIONAL AGREEMENT OF MAY 30, 1979 AMENDING THE MAY 27, 1937 NATIONAL AGREEMENT (SEE APPENDIX "L", PAGE 45 OF THE TRAIN DISPATCHERS AGREEMENT BOOKLET), THE FOLLOWING COMPLAINTS INVOLVING WORKING CONDITIONS OF TRAIN DISPATCHERS OR ASSISTANT CHIEF DISPATCHERS IN THE PHILADELPHIA OFFICE AND THE REQUESTED REMEDIES THERETO:

COMPLAINT: THE POSITION OF ASSISTANT CHIEF DISPATCHER "D" DESK IS OVERLOADED WITH WORK TO THE EXTENT THAT THE POSITION CANNOT BE WORKED AS PROSCRIBED BY THE CONRAIL/ATDA AGREEMENT RULE 1, SEC. (B), 1. WHICH READS:

ASSISTANT CHIEF TRAIN DISPATCHER: THESE CLASSES SHALL INCLUDE POSITIONS IN WHICH IT IS THE DUTY OF INCUMBENTS TO BE RESPONSIBLE FOR THE MOVEMENT OF TRAINS ON A DIVISION OR OTHER ASSIGNED TERRITORY, INVOLVING THE SUPERVISION OF TRAIN DISPATCHERS AND OTHER SIMILAR EMPLOYEES; TO SUPERVISE THE HANDLING OF TRAINS AND THE DISTRIBUTION OF POWER AND EQUIPMENT INCIDENT THERETO; AND TO PERFORM RELATED WORK.

REQUESTED REMEDY: THE REESTABLISHMENT OF ASSISTANT CHIEF DISPATCHER "E" DESK WITH ALL THREE SHIFTS, INCLUDING RELIEF ASSIGNMENT, TO SHARE THE WORK WITH ASSISTANT CHIEF DISPATCHER "D" DESK.

RESPECTFULLY YOURS,

 J. R. McPherson
 J. R. McPHERSON
 OFFICE CHAIRMAN-ATDA, PHILA.

 cc: ✓ MR. R. E. JOHNSON, PRESIDENT
 MR. W. A. CLIFFORD, VICE-PRESIDENT
 MR. M. A. SWARTZ, GENERAL CHAIRMAN
 MR. E. S. MCKEOWN, VICE-GENERAL CHAIRMAN



W. A. CLIFFORD, VICE PRESIDENT
TELEPHONE 617/577-4334

American Train Dispatchers Association

AFL-CIO and NLEA

188 WALNUT STREET, BROOKLINE, MA 02140

October 16, 1985

Donald Swanson
Vice President-Transportation
Consolidated Rail Corporation
6 Penn Center Plaza
Philadelphia, PA. 19103

Subject: Philadelphia
Train Dispatching Office

Dear Sir:

Please refer to my letter of September 24, 1985 concerning problems in the Philadelphia Train Dispatching Office. In that letter I requested to meet with you on this matter. You did arrange for me to meet Division Supt. Terziu on October 4, 1985 in Philadelphia.

This meeting was very unsatisfactory. Mr. Terziu did not deny that the Philadelphia Assistant Chiefs had a very heavy work load and he did not deny that the ASTO's had not been working to full capacity. He did say that the ASTO's should have been busier if they were doing their job properly.

Mr. Terziu also stated that he had told Mr. Beemler that he only wanted the five day Assistant Chief position on the first trick to work on the MW work. This is in complete contradiction to the agreement General Chairman Swartz reached with Mr. Beemler and Mr. Krubic of Relations on May 1, 1985. In addition at my meeting with Mr. Beemler on August 23, 1985 he had confirmed the results of the May 1, 1985 meeting.

Since that meeting the morale of the Philadelphia Train Dispatchers has seriously deteriorated. In addition incidents which I can only describe as bizarre have occurred in this office.

I would like to meet with you on this matter.

Very truly yours,

William A. Clifford

Vice President-Northeast

cc R.E. Johnson
M. Swartz
E. McKeown
J. McPherson

OCT. 25, 1985

M.A. SWARTZ
597 MAGARO ROAD
ENOLA, PA. 17025

DEAR MARLIN:

PER YOUR REQUEST, THE FOLLOWING IS A DESCRIPTION OF THE UNSAFE CONDITION CREATED ON "B" DESK BY V.L. TERZIU, DIV. SUPER., ON SEPT. 4, 1985.

MR. D. WILLIAMS WAS RELIEVED BY MR. R. BURGSTALLER ON "B" DESK AT APPROX. 2:40 PM. AT APPROX. 2:50 PM, WPCA-31 REPORTED TO THE DISPATCHER THAT THE CROSSING PROTECTION WAS NOT WORKING AND THIS WAS THE SECOND DAY HE WAS NOT NOTIFIED. MR. TERZIU CONTACTED MR. BURGSTALLER VIA RADIO, AND REQUESTED INFORMATION ON THE SITUATION WHICH WAS FURNISHED AT THE TIME.

AT APPROX. 4:00 PM, MR. D. VITALO, ASST. SUPER. RULES, CAME INTO THE CONTROL CENTER AND TOLD MR. BURGSTALLER TO COME WITH HIM. MR. BURGSTALLER ASKED WHO WOULD TAKE CARE OF THE DESK; HE WAS TOLD "DON'T WORRY ABOUT THAT".

SUBSEQUENT TO MR. BURGSTALLER'S DEPARTURE, MR. G. JOHNSON, WHO WAS WORKING AS ASST. CHIEF ON "D" DESK, WAS TOLD TO TAKE OVER "B" DESK. MR. JOHNSON RECEIVED ABSOLUTELY NO TRANSFER AND CONSEQUENTLY HAD NO IDEA OF WHAT TRAFFIC OR CONDITIONS EXISTED ON THAT SECTION OF RAILROAD. THE SECTION WAS EXTREMELY BUSY AT THE TIME WITH MW AND SHIFTERS. SINCE THE ABOLISHMENT OF FLOCK OPERATORS SOUTH OF PAVCNIA, THERE IS NO "SAFETY BUFFER" BETWEEN THE DISPATCHER AND OPERATIONS.

AT APPROX. 7:00 PM, MR. VITALO INFORMED MR. BURGSTALLER THAT HE WAS BEING ALLOWED TO RESUME "F" DESK. MR. BURGSTALLER RECEIVED VERY LITTLE TRANSFER FROM MR. JOHNSON AS MR. JOHNSON WAS 3 HOURS BEHIND IN HIS NORMAL WORK AND WAS UNDER PRESSURE TO "CATCH UP".

I SPOKE WITH MR. JOHNSON AND MR. BURGSTALLER; BOTH WAS VERY CONCERNED BY WORKING THE DESK WITH NO TRANSFER AND VERY LITTLE TRANSFER IN THEIR RESPECTIVE CASES. THEIR MAIN CONCERN WAS "KILLING SOMEBODY" BECAUSE OF INADEQUATE KNOWLEDGE.

I'M TOLD THAT MR. VITALO WAS ACTING ON THE INSTRUCTIONS OF MR. TERZIU WHEN MR. BURGSTALLER WAS PULLED. ALBEIT, A DANGEROUS CONDITION EXISTED BY ROAD CROSSINGS NOT BEING PROTECTED, BUT THE SITUATION WAS ALREADY CORRECTED AT THIS TIME. I FEEL THAT MR. TERZIU CREATED A MUCH MORE DANGEROUS CONDITION BY PLAYING "MUSICAL CHAIRS" WITH THE DISPATCHERS; HE SHOWED LITTLE CONCERN FOR THE VITAL INFORMATION EXCHANGED AT TRANSFER TO ALLOW THE DISPATCHER TO RUN A SAFE RAILROAD. REGARDLESS OF HOW GOOD A PARTICULAR DISPATCHER IS, HE STILL NEEDS THAT INFORMATION PROVIDED BY TRANSFER.

FRATERNALLY YOURS,

J.R. McPherson

J.R. MCPHERSON
OFFICE CHAIRMAN-ATTA, PHILA.

CONRAIL

A-56

MEMORANDUM

EASTERN REGION

DATE: November 14, 1985

TO: DISTRIBUTION

Location -

FROM: D. A. Swanson

Location 1722 6 Penn Ctr

SUBJECT: Erroneous TMS Reporting

I have been apprised of an incident whereby a system official called a major terminal to determine the status of the dispatchment of an important train. The yardmaster on duty advised at 1610 that "he just pulled at 1608".

Later when examining the TMS, it showed that that train departed 1530 on time.

This falsification of departure, arrival, or passing time in the TMS will not be tolerated.

I will expect you to handle with all concerned.

DISTRIBUTION

G. N. Corcoran
G. T. Dailey
W. D. Murphy
K. J. Tomasevich
J. H. Kithcart

D. M. Connelly

V. L. Targine

M. G. Peterson

For your handling
with all concerned.

D. N. Connelly

11/13/85

CC: R. W. Sevens

RSTO

A-57

American Train Dispatchers Association



NOV 22 1985

AM 7,8,9,10,11,12,13,14,15,16 PM

November 17, 1985

Mr. G. A. Bent
General Director Labor Relations
Conrail Rail Corporation
111 Penn Center
Philadelphia, PA 19104-1000

SUBJECT: WORKING CONDITIONS
1977/1979 Agreement
Philadelphia Office

Dear Sir:

Reference is made to your complaint pursuant to per-
sonnel rule 10.1 of the National Agreement of
the ATD, dated 1977/1979, which concerns the
Philadelphia Office.

Enclosed for you is a copy of "D" Assistant Labor
Relations.

Enclosed for you is a copy of the complaint in compliance with
the National Agreement of the ATD, dated 1977/1979, which concerns the
Philadelphia Office.

Mr. Bent, please advise me of the results of the (30) days
study period and if the complaint is or is not upheld.

Therefore, please consider my request for a
study to be provided in this Agreement.

As further request that this be listed for discussion
at our monthly meeting on December 3, 1985.

Respectfully yours,

W. A. Clifford

W. A. Clifford *esm*
Acting General Chairman

J. E. McKeown
General Chairman

J. E. Johnson, Jr. ✓
J. E. Johnson, Jr. ✓

A.S.T.O. 15
A.C.T.D. 15
T.D. 15
all read and comply

CAR



W. A. CLIFFORD, Vice President
TELEPHONE 817/877-4934

American Train Dispatchers Association

AFL-CIO AND RLEA
188 WALNUT STREET, BROOKLINE, MA 02140

December 8, 1985

R.E. Johnson - President
American Train Dispatchers Assoc.
1401 South Harlem Avenue
Berwyn, Illinois 60402

Subject: Philadelphia
CR Office

Dear Bob:

On December 5, 1985 VGC Eric McKeown and I met in Philadelphia with Conrail VP Transportation Swanson and Senior Director Labor Relations George Bent concerning various problems in the Philadelphia Train Dispatching Office.

We discussed the failure of Division Supt. Terzui to answer our Power Claim and to answer a letter from Eric concerning their failure to meet the time limits on this claim. In addition they had not answered the Office Chairman concerning a 1937-79 study on the ACD Job.

We also discussed the Supt. having an Assistant Chief stay home with pay simply because he did not want to see him in the office and in addition pulling a Train Dispatcher off the job and making an Assistant Chief take over without a transfer. Ironically this Dispatcher was put back on the job three hours later when the Supt. decided he should not have been removed in the first place.

There is of course many complaints against Supt. Terzui and VP Swanson listened very patiently and said he would talk to Terzui about our complaints.

The following day Eric was contacted by Terzui and we have a meeting with him on December 17th at the Division Headquarters in Philadelphia.

Fraternally,

W. A. Clifford

cc E. McKeown
J. McPherson



DEC 19 1986



AM

PM

7,8,9,10,11,12,3,4,5,6

Owen Steward, Jr.
458 Harding Street
Woodbury, New Jersey 08096
March 12, 1986

Mr. Bob Johnson
President, A.T.D.A.
Berwyn, Illinois

Mr. R. Johnson,

Conrail is planning on April 1, 1986, to close Jersey Tower and transfer all duties of this towerman to Train Dispatcher Desk B, Philadelphia Office. This tower controls the interlocking at the North End of Pavonia Yard which enters the Bordentown Secondary track, which is a manual block operation of 35.8 miles with six block stations between Camden and Trenton, New Jersey. This is a very busy operation, with freights, local shifters, and a great deal of M of W work. It is also proposed to make it a through freight operation when the Delair Bridge is turned over to Amtrack. It has no yard limits and all moves must be handled with CT401's. All operations are now handled through Jersey Tower and will be turned over to the Train Dispatchers.

Jersey Tower also handles all operations to and from the Pemberton Industrial track, which extends from Camden to Mount Holly, New Jersey. This consists of about three through freights to Mount Holly per week, in addition to daily shifters on the Camden end of the track.

It also controls the Delair Bridge, a drawbridge over the Delaware River. It is opened about five times daily for river traffic, such as all kinds of commercial vessels and Coast Guard operations.

Also, it operates the Delair Branch, which is double track between Shore and Amtrack Tower in North Philadelphia and Jersey Tower. No. 1 track is 261 operation and No. 2 track is 251 operation. All calls now going to Jersey Tower will come directly to the train dispatchers.

Also, Jersey Tower handles all moves between Jersey Tower and Pavonia Yard with the Yardmaster.

We have an operator at the train dispatchers' office who is allowed to do nothing but throw levers as directed by the train dispatchers. This man cannot answer any phones or make any decisions whatsoever, as Conrail wants to eliminate this position and so prevents the operator from performing any of his normal duties.

The South Jersey train dispatcher in 1984 lost five operators from Earnest, Cooper, Brown, Woodbury, and Winslow. He has been performing the duties of these men since that time, except for Earnest, which territory was transferred to Desk C in January, 1985.

I do not know what position you will want to take, but these duties should not all be transferred to the South Jersey Train Dispatcher. The operator at the Control Center could assume some of these duties if the Company would let him, or we could have another Dispatcher's position. We should not allow this change of operations to pass unnoticed, and should have ATDA personnel to supervise this change on the first day it occurs, instead of waiting six months as we did on the Chief Dispatcher's position, when the work has all drifted away and we will not get it back.

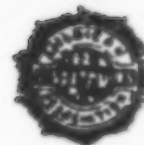
I would like the Vice-president of this area to be available on the scene at least, when this operation is put into effect. It has been postponed many times, but it will eventually take place.

We lose this type of operation for lack of promptness of response. I am not crying "Wolf." We need an ATDA representative on the scene when this change is put into effect.

Fraternally,

O. F. Steward
O. F. Steward

Copies: *WA Clifford*
E. S. McKeown
J. McPherson



EXECUTIVE OFFICE

R. E. JOHNSON, President
D. E. COLLINS, Secretary-Treasurer

March 18, 1986

American Train Dispatchers
Association

AFL-CIO and RLEA
1401 SOUTH HARLEM AVENUE, BERWYN, ILLINOIS 60402
(312) 798-8886

Mr. O. F. Steward, Jr., Vice General Chairman
American Train Dispatchers Association
Conrail System Committee
458 Harding Street
Woodbury, N.J. 08096

SUBJECT: ADDED DUTIES AND RESPONSIBILITIES - CONRAIL
Philadelphia.

Dear Brother Owen;

Thank you for your very informative letter of March 12, 1986 concerning the work that is going to be transferred into your office on or about April 1, 1986.

First, I am asking Vice President Clifford, with his copy of this letter, to try to arrange his calendar in order for him to be in the office for the first 8 hours the work is assumed by the train dispatchers at Philadelphia. You mention April 1; I am supposing it will take effect at 12:01 a.m., Tuesday, April 1, 1986?

However, I would suggest that you write a letter to the Superintendent there, stating your objection to the added duties and responsibilities, and that it will be "hazardous to those employees under the jurisdiction of such train dispatcher and obviously unsafe and furthermore, will be detrimental to the health and welfare of any train dispatcher who is required to perform the duties assigned. . ." etc. I would go ahead and suggest to him what an acceptable solution to the problem of "overload" would be. Either an additional desk of train dispatchers and/or rearrange the work in the office among the existing desks. Ask for a conference with him as soon as possible.

We cannot force them into a job study "before the fact", but if all fails, I would suggest that you have the office chairman have a 1937/79 "overload" complaint ready to file at 12:02 a.m., April 1.

Let me know if I can help.

Fraternally,
R. E. Johnson
R. E. Johnson, President

cc-WA Clifford
E. S. McKeown

458 HARDING ST.
WOODBURY, N.J.
APR. 26, 1986

*Added duties - One
photo*

MR. D. WILSON
SUPT. PHILA. DIV.
DEAR SIR,

IN REGARDS TO THE INTENDED CLOSING OF JERSEY TOWER AND THE TRANSFER OF DUTIES TO TRAIN DISPATCHER DESK B PHILA. OFFICE.

THIS ADDITION OF DUTIES AND RESPONSIBILITIES WILL BE HAZARDOUS TO THE EMPLOYEES UNDER THE JURISDICTION OF THE TRAIN DISPATCHERS AND MAY BE FOR AN UNSAFE OPERATION. IT WILL ALSO BE DETRIMENTAL TO THE HEALTH AND WELFARE OF ANY TRAIN DISPATCHERS REQUIRED TO PERFORM THESE DUTIES.

I WOULD LIKE A CONFERENCE WITH YOU AS SOON AS POSSIBLE TO DISCUSS A SOLUTION TO THIS PROBLEM.

YOURS TRULY,

OWEN F. STEWARD JR.
VICE GENERAL CHAIRMAN
A.T.D.A.

*Copies - C. K. - STO
E. Mc Keown
W. Offord
R. Johnson*

American Train Dispatchers Association

RECEIVE [

AM 7,8,9,10,11,12,1,2,3,4,5,6

4/26/86

Bob

*I don't know how soon this will occur but
that it will come about some time within a month
it has been proposed so many times you don't
know what to think. the Company says nothing
until they do it will keep you advised*

*Fraternally
Owen*

May 29, 1986

Mr. D. A. Ross;

*Office Condition -
photo*

American Train Dispatchers Association
RECEIVE D
MAY 29 1986
AM 7,8,9,10,11,12,1,2,3,4,5,6 PM

I wish to bring to your attention the fact that undue stress's with yet unknown results, are being placed upon the train dispatcher's in the Philadelphia Division Control Center.

The unnecessary stress to which I refer is the representatives of the railroad department who monitor the train dispatcher's every move, and "go over the head" of the train dispatcher if a request for movement is not honored.

Secondly, the yard crews have their advocate in the person of the trainmaster who beats a path to your desk if a yard crew is justifiably delayed.

As you are aware, the train dispatcher is charged with the responsibility of movement of all traffic on main tracks, under the rules of the operating department but today we must be ready to explain the logistics of our decisions at the whim of any departments advocate.

I ask who is the train dispatcher's advocate?

The problem is real, rather than imaginary or exaggerated.

If this particular problem, when combined with safety problems - I have previously spoken to you about, is underestimated or covered up, we may have disastrous results in the health and well-being of the train dispatchers in the Philadelphia Division of Conrail.

I am asking for your help.....

Wayne G. Owens Sr.
Wayne G. Owens Sr.
Train Dispatcher

Copies:
O.F. Steward - Vice Gen. Chairman A.T.D.A.
D.J. Vitalo - Rules Examiner Conrail
W. Beimler - Asst. Div. Supt. - Phila. Div.
R. Johnson - Pres. A.T.D.A.

American Train Dispatchers Association



458 Harding Street
Woodbury, N.J. 08096
June 26, 1986

Mr. D. L. Wilson
Supt. Philadelphia Div.
Conrail
Philadelphia, Pa.

Dear Mr. Wilson:

We as Train Dispatchers have recently been troubled on numerous occasions by being put in a position which compromises safety. I do not think we should be expected to accept this condition.

This has been caused by Conrail's policy of not calling out personnel to check on conditions which could cause operating problems; also, by being unwilling to accept delay when trains should be checked for defects.

It is the position of the American Train Dispatchers Association that safety is of first importance and no one should lose sight of this for economic or for scheduling reasons.

I would appreciate an answer from you as soon as possible advising if you concur in this matter. If you would like to discuss this alone, or with any member of your staff, I will be available at your convenience.

Yours truly,

O. F. Steward
Vice General Chairman A.T.D.A.

Copies:

W. Clifford
E. McKeown

CONRAIL



Second Floor
3460 N. Delaware Avenue
Philadelphia, PA 19134
July 3, 1986

Mr. O. F. Steward
Vice Gen. Chrmn A.T.D.A.
458 Harding Street
Woodbury, NJ 08096

Dear Mr. Steward:

In response to your letter of June 26th, the only answer I can give you to this very vague situation is that I agree with you insofar as your statement "safety is of first importance".

Your letter is lacking of sufficient facts, situations and any conclusions to be taken. If you have specific details regarding situations, please advise.

Sincerely,

D. L. Wilson
Division Superintendent

cc:
W. E. Sizemore
L. N. Wiles
W. Clifford
E. McKeown

American Train Dispatchers Association



September 3, 1986

Mr. E. S. McKeown
General Chairman, ATDA
RD # 3, Susquentia Hill
Duncannon, Pennsylvania 17020

Subject: Meeting, September 2, 1986

Dear Eric:

Had meeting from 10:05 AM to 12:45 PM on September 2, 1986, with the following:

Mr. D. L. Wilson, Philadelphia Division Superintendent
Mr. L. Finnegan, Director of Personnel, Eastern Division
Ms. Darcelle Magee, Supervisor, Labor Relations
Mr. C. Ross, Supervisor, Train Operations
Mr. J. Nuss, Philadelphia Division Rules Examiner

We discussed rate of absenteeism and possible solutions.

Superintendent Wilson proposed possible combination of Desk A and Desk E. After discussion, at suggestion of Rules Examiner Nuss it was decided Desk B and Desk C should be combined and Morrisville Line should be moved to Desk A. Target date: October 1, 1986. I have received nothing in writing on any of these proposals.

Also discussed was abolishment of position on August 31, 1986, of one guaranteed Train Dispatcher position.

I tried to dissuade them from the combination of Train Dispatcher positions, as all jobs we have are busy now, but my advice was not heeded.

Will keep you advised of developments.

Fraternally,

O. F. Steward, Jr.
O. F. Steward, Jr.
Vice General Chairman, ATDA

copies:

Mr. B. J. Irvin, President, ATDA
Mr. W. A. Clifford, Vice-president, ATDA

MEMORANDUM

DATE September 4, 1986

FROM N. J. Nuss

TO STD's, Asst. Chiefs and

Train Dispatchers
Block Operators

SUBJECT

Train Collision - Youngstown

PHONE

CONRAIL

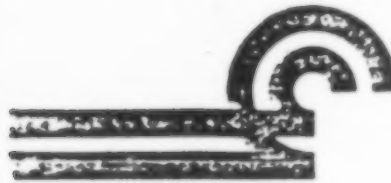


Attached for your review are the facts concerning collision of two (2) trains in the Youngstown area. Should you have any questions concerning this incident, please call this office.

Attachment

8/29/86
CC: All Mgrs
suprs
your info
A-68
captains with last
paragraph.
JW

CONRAIL



MEMORANDUM

DATE August 29, 1986

TO D. A. Swanson

FROM A. C. Fisher

Rm. 1722-Six Penn Ctr.

Rm. 310-Six Penn Ctr.

Phila., PA 19103-2959

Phila., PA 19103-2959

SUBJECT

Collision of Trains UOX82-A and UOH-95

PHONE

on August 27, 1986

There is no doubt that the primary cause of the collision of trains UOX82-A and UOH95 immediately north of Graham Interlocking at 3:20AM on August 27, 1986 was caused by train dispatcher error. The train dispatcher authorized the northbound Train UOH95 engine 6763 to occupy the same block between Block Limit Signal Graham and Block Limit Signal Hazel that Train UOX82-A engine 6780, was already occupying in violation of Rule 317 of the Rules of the Transportation Department.

There were three unique situations concerning this specific incident (over and above the dispatcher's failure to follow Conrail's Manual Block Signal Rules) that should have prevented the collision:

1. Youngstown North Dispatcher had a visual display of the trackage immediately surrounding Graham Interlocking which indicated a track occupied light North of Graham Interlocking on the Secondary Track.
2. The Youngstown TCS Operator had to visually display this same interlocking showing a track occupancy North of Graham Interlocking when he cleared the northbound interlocking signal at Graham upon instructions of the Youngstown North Dispatcher.
3. The Youngstown North Dispatcher clearly indicated to the standing UOX82-A crew by radio that he might have created an overlap of authority approximately 30 minutes before the collision.

A-69

D. A. Swanson
Page 2
August 29, 1986

Youngstown North Dispatcher Lenhart contacted UOX82-A with the following message "UOX82-A I've got a northbound out of Castle. He's fixed up on the Secondary to Hazel. Report his marker by so I can run you." This message was rogered by someone on the crew of UOX82-A.

If any of the employees mentioned above, i.e. the Youngstown Dispatcher, the Youngstown TCS Operator or any of the three crew members on standing train UOX82-A had been paying full attention this accident could have been prevented.

I have issued instructions that all dispatchers and operators be contacted and have the facts of this accident related to them and in future train and engine rules classes will also include discussion of the importance of crews listening to all radio transmissions carefully.

cc:
W. D. Murphy
R. N. Dawson
J. P. McCombs
D. R. Yerkes

CONRAIL



September 4, 1986

Mr. Owen Steward, Jr. *(local chairman)*
458 Harding Street
Woodbury, N.J. 08096

Dear Mr. Steward:

Reference to our meeting on September 2, 1986, with reference to the consolidation of dispatcher territories and subsequent elimination of one (1) position, this is to advise that it is Conrail's intent to incorporate all of the present Desk B territory onto Desk C and at the same time transfer the Morrisville Line from Desk C to Desk A.

Sincerely yours,

D. L. Wilson

D. L. Wilson
Division Superintendent

G.J.N.:

Please draft for O. F. Steward, Jr., a 37-79 agreement complaint on inadequate force in his office.

You'll have to put lots of blanks in, for him to supply the needed information. Put it in general terms.

R.J.I. 12-12-86



EXECUTIVE OFFICE
OFFICE OF
DIRECTOR OF RESEARCH

American Train Dispatchers Association

INTERNATIONAL HEADQUARTERS
1401 SOUTH HARLEM AVENUE, BERWYN, ILLINOIS 60402
(312) 785-3600

December 15, 1986

Mr. O. F. Steward, Vice General Chairman,
A.T.D.A. ConRail System Committee,
453 Harding St.,
Woodbury, NJ 08096

Subject: WORKING CONDITIONS - ConRail
Inadequate force, Philadelphia, PA

Dear Owen:

President Irvin asked me to send you the attached draft of a complaint to be presented concerning the above subject.

If the complaint has more than one items, number them as in the draft. If only one complaint, no number is necessary.

With best wishes for the coming holidays.

cc: Mr. R. J. Irvin, President
Mr. W. A. Clifford, Vice President

Attachment

Fraternally yours,

G. J. Nixon, Jr.
G. J. Nixon, Jr.
Dir. of Research

D-R-A-F-T

_____, 1986

To be addressed to the person designated
by ConRail to initially receive claims
and grievances from Train Dispatchers

This is to bring to your attention, pursuant to the provisions of the National Agreement of May 30, 1979, amending the May 27, 1937 National Agreement, the following complaint(s) involving working conditions of Train Dispatchers in the Philadelphia, PA office and the requested remedies thereto:

1. COMPLAINT. Give the details of the complaint
REQUESTED REMEDY. Give the details of what you want done to remedy the complaint.
2. COMPLAINT.
REQUESTED REMEDY

Yours truly,

cc: Mr. R. J. Irvin, President
Mr. W. A. Clifford, Vice President
Mr. E. S. McKeown, General Chairman

CONRAIL

JAN 14 1967

Mr. R. G. Shoemaker

Dear Sir:

A review of your attendance record since your counseling session indicates there has been little or minimal improvement.

You were encouraged at the time you were counseled to develop better attendance habits, therefore this letter is to inform you that frequent or excessive absenteeism will not be tolerated and that future absenteeism may result in formal discipline.

Attached is a copy of Conrail's attendance improvement program for your guidance.

Please return bottom portion of this letter to the undersigned.

Sincerely,

W. E. Sizemore
W. E. Sizemore
Assistant Superintendent

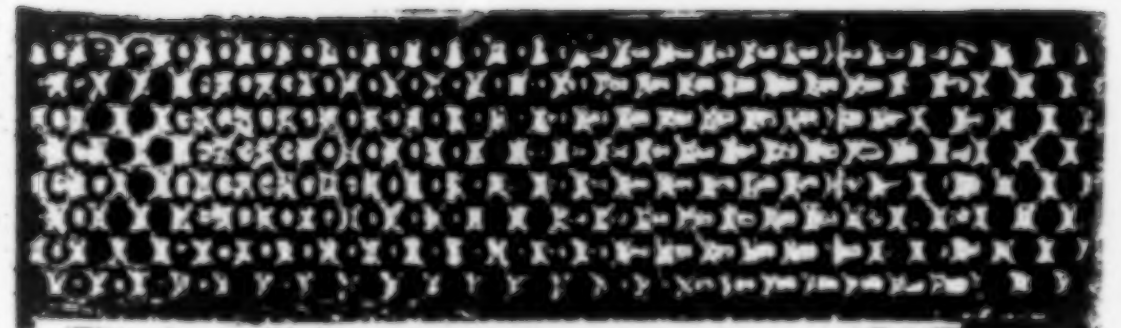
W. E. Sizemore:

JAN 14 1967

I have reviewed and understand the letter dated _____
sent to me regarding my attendance record.

(Signed)

C. A. Ross

Rev'd 2/10/87 from J. O'Leary
PWA

CONRAIL

A-76



February 2, 1987

Mr. Charlie Barber
Train Dispatcher
3460 N. Delaware Av.
Phila., PA

Dear Mr. Barber,

On the night of January 28, 1987 while dispatching "A" section of territory there was caused unnecessary delay to Train TV24. It is the responsibility of you, as a Train Dispatcher, to know where your trains are. WPMO-1, ordered 8 AM at Morrisville, was overboard at Cheltenham Junction on #1 Track. The failure of your knowing that this train was overboard at Cheltenham caused 1 hour 15 minute delay on TV24, from 10:28 PM to 11:41 PM.

You may consider this a reprimand and it will be made part of your personal file. Any future failures of this nature will necessitate more severe actions being taken.

Sincerely,

Michael F. Ohr

Michael F. Ohr, ASTO

cc: D. L. Wilson
C. A. Ross
C. R. Hurley, ATDA
J. D. Curcci

CONSOLIDATED RAIL CORPORATION

G-350-T&E (New) 3-83
Notice of Investigation

A-77

CONSOLIDATED RAIL CORPORATION

February 6, 1987
Date of Notice

Name	Occupation	Address
TO: W. Baumer	Asst. Chief Train Dispatcher	71 Davids Way Warrington, PA 18976

You are to attend a formal investigation at Conference Room - 3460 N. Delaware Avenue,
Second Floor, Philadelphia, PA 19134
(Location)
on Tuesday February 10, 1987 at 10:00 a.m.
Day Date Time

to determine your responsibility, if any, in connection with:

Your untimely ordering of Engine Exchange Crew and improper handling of Engine Exchange Crew during your tour of duty on January 27, 1987 resulting in severe delay to Train TV-1.

You may arrange to be accompanied by your duly accredited representative.

[Signature] Tyson Road, Morrisville, PA
Signature of Company Official Address of Company Official
Terminal Superintendent
Title

NOTE: Send by U.S. Certified Mail, Return Receipt Requested, or personal delivery.

COPY TO: C. A. Ross, Supervisor-Train Operations

Arrange to attend as a witness at the above investigation
[Signature]
Terminal Superintendent
Signature and Title of Company Official

This acknowledges receipt of notice dated _____
requesting me to attend a formal investigation on _____
Date

Date Notice Received Employee Signature

MR C HURLEY A.T.D.A.

DEAR BRO. HURLEY,

I RECEIVED MY PAYCHECK FOR PERIOD ENDING JAN 27. AND WAS NOT PAID FOR 3 SICK DAYS FOR JAN 22, 23, AND 24. WHEN I RETURNED TO DUTY I GAVE MR CIRUCCI A NOTE FROM MY DOCTOR EXPLAINING MY ILLNESS AND LENGTH OF SAME. ~~MR WILSON HAS NOT COME TO THE OFFICE SINCE I ASKED FOR SOMETHING IN WRITING TO VERIFY THAT STATEMENT AND FINALLY RECEIVED A LETTER FROM MR CIRUCCI ON FEB 18 IN REPLY TO THAT MATTER. FIND ENCLOSED A COPY OF DOCTORS NOTE AND A COPY OF MY PAY STUB WHICH REFLECTS THE LOSS PAY. I DONT KNOW ABOUT THE REST OF YOU, BUT I RELY ON MY WEEKLY CHECK IN ORDER TO KEEP MY FAMILY IN FOOD. AND TO THE BEST OF MY KNOWLEDGE, I AM ENTITLED TO 28 SICK DAYS AS PER AGREEMENT. PLEASE HANDLE WITH A.T.D.A. AS SOON AS POSSIBLE.~~

SINCERLY,

Donald H. Hoomaker
2/10/87

Mr. D. L. Wilson
Division Superintendent

Re: Combining Territories
Desk A and Desk B

Sir:

I am Local Chairman for the American Train Dispatchers, Philadelphia Office and believe the merger of territories of Desk A and Desk B presents serious problems pertaining to working safely and efficiently resulting in causing unnecessary and harmful stress upon an inherently stressful occupation, your Train Dispatchers. The present Desk B, as you are aware, works with 8 radio bases, 1 Yardmaster, 5 Trainmasters, various M&W supervisors and foremen, Signal dept. employees, 1 Delair Bridge Operator and we supervise train movements via the CTC machine located at Delaware Ave., governing train movements through the following locations - Jersey - CP Hatch - CP Mill - CP Brown and Woodbury - not to mention various Amtrak employees working vicinity of Winslow, NJ. As this territory is most often governed by Rule 271 all train movements must be authorized by issuing a CT 401 for trains to operate. When these duties are not pressing, we are required to put a number of entries on our computer detailing location and work performed. We are frequently criticized for late input in the computer. We haven't even mentioned the subject of possible engine failures, derailments, signal failures, road crossings inoperative and adverse weather. But with proper spacing all the above duties are now being properly accomplished in a safe and efficient manner.

We are now being told to assume the duties of Desk A which also handles all the above duties and whose train movements are high tonnage and considered performance train at Conrail. In addition, we work with Amtrak Towers Penn, Zoo and Conrail Towers - Stadium, Nice and Norris. Having already worked the position, I must emphasize, most attention will be and must be on the A Desk territory, especially in the areas of Belmont and No. 1 and No. 2 Highline in Philadelphia. You can imagine the calls waiting for our attention on the Desk B territories.

(2)

In conclusion, while other Conrail Dispatchers may have larger areas and may operate more trains, they are over the road or straight run trains, while ours is a Terminal Operation which involves strict attention and quick decision making on every train.

Our ability as Train Dispatchers is well within the expert level and our desire to perform as professionals is without question. But the safety of our crews and the general public is now in question as we are being stretched to an abnormal point of responsibility, which will no doubt boomerang and bring us to certain situations in which the unexpected happens and the work load becomes impossible to keep up with. Instead of constructive advice to aid our duties, our abilities as Train Dispatcher is often questioned.

Mr. Wilson, our organization respectfully requests you to reconsider the decision to combine the A and B Desk territories for the aforementioned reasons and consider the fact that the health and well being of your employees, plus the safety of our operation must outweigh the monetary gain resulting from a job elimination.

Respectfully yours,

Charles A. Hurley
Local Chairman
A.T.D.A.

Applications will be received in writing by J. D. Cirucci, Delaware Avenue, Philadelphia Penna., with a copy to C. R. Hurley, Office Chairman, A.T.D.A., Delaware Avenue, up to 8:30 A.M., February 13, 1987.

Bulletin No. 4

Location	3460 N. Delaware Avenue, Phila. Penna.
Title	Train Dispatcher Desk "A" & "B"
Tour of Duty	7:00 A.M. to 3:00 P.M.
Rest Days	Sunday and Monday
Territory	Desk "A" & "B"
Daily Rate	\$136.55 Per Day

Location	3460 N. Delaware Avenue, Phila. Penna.
Title	Relief Train Dispatchers "B" Desk
Tour of Duty	Sunday and Monday "A" & "B" Desk 1st Trick Tuesday and Wednesday "B" Desk 2nd Trick Thursday "A" & "B" Desk 3rd Trick
Rest Days	Friday and Saturday
Daily Rate	\$136.55 Per Day

Effective 7:00 A.M., February 16, 1987, Train Dispatcher 1st Trick Desk "B" will also Dispatch Territory Desk "A"

TERRITORY "A" DESK

Trenton Line - CP-Park to CP-Newtown Jct. T.M.S. Coverage - CP-Newtown Jct., to CP-Wing Chester Secondary - Harrisburg Line - Stadium to CP-Phoenix - Arsenal to Phil. Responsible for the input of passing times and other pertinent information into the TNS.

TERRITORY "B" DESK

Lindenwold Running Track - Delair Branch - Jersey - Hatch Connecting Track - Bordentown Secondary - Bridgeton Secondary - Salem Secondary - Penns Grove Secondary - Beesley's Point Secondary - Vineland Secondary. Responsible for the input of passing times and other pertinent information into the T.M.S.

Effective with the termination of the tour of duty on the indicated time and dates the following positions at Delaware Avenue, Philadelphia, Penna., are abolished:

<u>POSITION</u>	<u>INCUMBENT</u>	<u>TIME</u>	<u>EFFECTIVE DATE</u>
Train Dispatcher "A" Desk 1st Trick	E. R. McCauley	3:00 P.M.	February 13, 1987
Train Dispatcher "B" Desk 1st Trick	O. F. Steward	3:00 P.M.	February 14, 1987
Relief Dispatcher "A" & "B" Desk	C. R. Hurley	3:00 P.M.	February 15, 1987
Extra Train Dispatcher	M. F. Jones	7:00 A.M.	February 16, 1987

Applications will be : 1 in writing by J. D. Cirucci, Delaware Avenue, Philadelphia Penna., with a copy to C. R. Hurley, Office Chairman, A.T.D. ., Delaware Avenue, up to 9:00 A.M., March 13, 1987.

Bulletin No. 5

Location 3460 N. Delaware Avenue, Phila. Penna.
 Title Train Dispatcher Desk "A" & "B"
 Tour of Duty 3:00 P.M. to 11:00 P.M.
 Rest Days Tuesday and Wednesday
 Territory Desk "A" & "B"
 Daily Rate \$136.55 Per Day

Location 3460 N. Delaware Avenue, Phila. Penna.
 Title Relief Train Dispatcher "A" & "B" Desk
 Tour of Duty Sunday and Monday "A" & "B" Desk 1st Trick
 Tuesday and Wednesday "A" & "B" Desk 2nd Trick
 Thursday "A" & "B" Desk 3rd Trick
 Rest Days Friday and Saturday
 Territory Desk "A" & "B"
 Daily Rate \$136.55 Per Day

Effective 3:00 P.M., March 14, 1987, Train Dispatcher 2nd Trick "B" Desk will also Dispatch Territory Desk "A"

TERRITORY "A" DESK

Trenton Line - CP-Park to CP-Newtown Jct., T.M.S. Coverage - CP-Newtown Jct., to CP-Wing Chester Secondary - Harrisburg Line - Stadium to CP-Phoenix - Arsenal to Phil., Responsible for the input of passing times and other pertinent information into the TNS.

TERRITORY "B" DESK

Lindenwold Running Track - Delair Branch - Jersey - Hatch Connecting Track - Bordentown Secondary - Bridgeton Secondary - Salem Secondary - Penns Grove Secondary - Beesley's Point Secondary - Vineland Secondary. Responsible for the input of passing times and other pertinent information into the T.M.S.

Effective with the termination of the tour of duty on the indicated time and date the following position at Delaware Avenue, Philadelphia, Penna. is abolished:

POSITION	INCUMBENT	TIME	EFFECTIVE DATE
Train Dispatcher "A" Desk 2nd Trick	C. B. Barber	11:00PM	3-13-87
Extra Train Dispatcher	T. M. Scanlon	11:00PM	3-13-87
Extra Train Dispatcher	M. F. Jones	11:00PM	3-13-87

AWARDS

Train Dispatcher "A" & "B" Desk 1st Trick E. R. McCauley
 Relief Train Dispatcher "A" & "B" Desk W. J. Wexler

CC: C. R. Hurley

C. A. Ross
Supervisor Train Operations

MEMORANDUM

DATE February 25, 1987

FROM D. L. Wilson *D.L.W.*

TO Distribution

SUBJECT Use of Vacation

PHONE

Effective immediately, vacation is to be taken in weekly increments only and not in single days. Exceptions to this rule are:

1. Snow days
2. Bereavement reasons

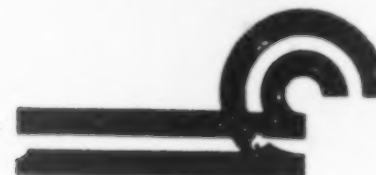
If vacation is used for either of the above reasons, the remaining portion is also to be consolidated. For example, if one day vacation is used for a funeral, then the 4 remaining days are to be taken together or added to another vacation period.

Please be governed accordingly and advise all of those under your jurisdiction. This policy concerns vacation only and is not to be associated with the use of Personal Days.

Distribution:

W. E. Sizemore
 G. M. Womer
 C. B. Turek
 F. J. Hasson
 T. Hardin
 C. A. Ross
 J. S. Dunn
 D. J. Evers
 D. L. Campbell
 N. J. Nuss
 E. E. Leisey
 E. J. Holloran

CONRAIL



*Immediately after
 11:00 PM
 3-13-87*

SLEET & FARRELL
ATTORNEYS AND COUNSELORS AT LAW
230 SOUTH BROAD - 8TH FLOOR
BROAD AND LOCUST STREETS
PHILADELPHIA, PENNSYLVANIA 19102

GREGORY M. SLEET
*J. MICHAEL FARRELL
*ALSO A MEMBER OF THE
NEW JERSEY, SOUTH CAROLINA
AND DISTRICT OF COLUMBIA BARS

(215) 965-1370

April 7, 1987

NEW JERSEY OFFICE
231 SOUTH BROAD STREET
WOODBURY, NJ 08096
(609) 248-5801

Robert E. Swert
Vice President - Labor Relations
Conrail
1234 Six Penn Center
Philadelphia, PA

RE: Wayne Owens

Dear Mr. Swert:

Please be advised that I represent Mr. Wayne Owens. The purpose of this letter is to formally and in writing object to the threats and harassment which Mr. Owens has been the object of from the Superintendent, Philadelphia Division, D.L. Wilson.

Please be advised that Mr. Owens has been confronted by numerous Conrail employees and advised that Mr. D.L. Wilson has openly stated his intention to fire Mr. Owens.

Mr. Owens has been a railroader for 25 years, 19 of which as a train dispatcher. In the eyes of some, as a train dispatcher operationally Mr. Owens has few peers. A review of his record would reflect that his operations for the last 19 years have been as safe or safer than any other train dispatcher. Further, his service to Conrail and other railroads previous to his employment with Conrail has been exemplary, loyal and productive.

It is requested that Labor Relations conduct an investigation of this matter to end any further harassment so that Mr. Owens and other train dispatchers can be free to perform their most difficult but most valuable profession.

If you would like to further discuss this matter, please feel free to contact me. I remain

Very truly yours,

J. MICHAEL FARRELL

JMF:ls
cc: Wayne Owens
Charles Hurley
D.L. Wilson

CONRAIL

R. E. SWERT
VICE PRESIDENT
LABOR RELATIONS

April 13, 1987

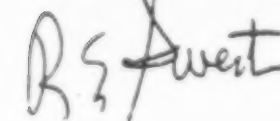
Mr. J. Michael Farrell, Esq.
Sleet & Farrell
230 South Broad - 8th Floor
Broad and Locust Streets
Philadelphia, PA 19102

Dear Mr. Farrell:

This refers to your letter of April 7, 1987, written on behalf of Train Dispatcher Wayne Owens objecting "to the threats and harassment which Mr. Owens has been the object of from the Superintendent, Philadelphia Division, D. L. Wilson."

This matter will be properly investigated.

Very truly yours,





R. E. SWERT
VICE PRESIDENT
LABOR RELATIONS

June 29, 1987

Mr. J. Michael Farrell, Esq.
Sleet & Farrell
230 South Broad - 8th Floor
Broad and Locust Streets
Philadelphia, PA 19102

Dear Mr. Farrell:

This has further reference to our letter of April 13, 1987, in connection with yours of April 7, 1987, regarding alleged "threats and harassment which Mr. Owens has been the object of from the Superintendent, Philadelphia Division, D. L. Wilson."

We have found no evidence that Mr. Owens has been subjected to threats or harassment by Mr. Wilson. In fact, it does not appear that Mr. Owens and Mr. Wilson have had any direct conversation for some time. However, we understand that various Philadelphia Division officials, including Mr. Wilson, are concerned about the high overall absentee record of Mr. Owens and his fellow Train Dispatchers.

During 1986, the twenty-two members of the Train Dispatching Office were absent, primarily due to sickness, an average of fourteen days per employee. Mr. Owens was absent due to sickness thirty-eight days for which he was paid sick allowance and one day due to his wife's illness. Absenteeism to this degree is a concern with respect to any employee. However, in Mr. Owens' case it is noted that 35 of his 39 days of absence fell on days directly connected to his assigned relief days. It is also noted that each of his 14 days of illness in 1987, through May 15, was also directly before or after such relief days.

It is further noted that, on at least one occasion, Mr. Owens has been specifically counselled with regard to his attendance record and encouraged to develop better habits. This was confirmed to Mr. Owens by Assistant Superintendent Sizemore's letter of January 14, 1987.

Mr. J. Michael Farrell, Esq.
Page 2
June 29, 1987

This company cannot continue to tolerate absences of this magnitude and pattern, nor can our officials' concern over such a record be regarded as harassment.

Very truly yours,

R. E. Swert
Vice President-Labor Relations

American Train Dispatchers Association



May 5, 1987

Mr. C. A. Ross
Supervisor Train Oprn.
Phila.

Dear Sir:

This is to bring to your attention, pursuant to the provisions of the National Agreement (see Appendix "D" page 45 of the Train Dispatchers' Agreement) the following complaint involving working conditions of Train Dispatchers in the Philadelphia Office and the requested remedy thereto:

COMPLAINT - The present position of Train Dispatcher Desk B is overloaded to the extent that it cannot be properly worked as prescribed by RULE 1 Scope (b) 2 "Trick Dispatchers, Relief Dispatchers, Extra Dispatchers, Guaranteed Assigned Dispatchers: these classes shall include positions in which it is the duty of incumbents to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.

REQUESTED REMEDY - The re-establishment of the Desk A Train Dispatching position for three (3) tricks, five (5) days per week.

Respectfully yours,

C. R. Hurley
Office Chairman

cc- Mr. R. J. Irvin, President
Mr. W. A. Clifford, Vice-President
Mr. W. N. Parker, Vice-General Chairman
Mr. E. S. McKeown, General Chairman
File

General Manager

NOV 15 1988

Eastern Region

TMS TIMELINESS

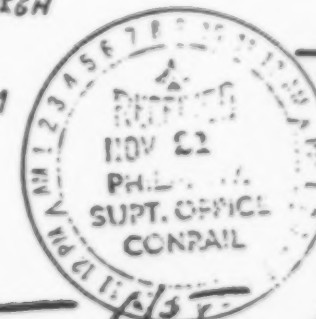
11-16-88

R.E. Hutton
R.E. Huty
J. Conway
J. Conroy
J. Fallon
J.H. Connor

Cotton! Fix it once!

PREVIOUS 30" or less

	WEEK ENDING 11/15	PREVIOUS WEEK	VARIANCE
1. SOUTHWEST	0'38"	0'35"	+ 03" ✓
2. COLUMBUS	0'43"	0'57"	- 14" ✓
3. CLEVELAND	0'45"	0'44"	+ 01" ✓
4. PHILADELPHIA	0'51"	0'55"	- 04" ✓
5. HARRISBURG	0'53"	0'42"	+ 11" ✓
6. BUFFALO	0'53"	0'49"	+ 04" ✓
7. ALBANY	0'55"	0'58"	- 03" ✓
8. SOUTHERN TIER	0'56"	1'28"	- 32" ✓
9. CHICAGO	1'00"	0'45"	+ 17" ✓
10. ALLEGHENY	1'02"	0'53"	+ 09" ✓
11. NEW JERSEY	1'04"	1'12"	- 08" ✓
12. DEARBORN	1'05"	1'01"	+ 04" ✓
13. PITTSBURGH	1'14"	1'33"	- 19" ✓
SYSTEM	0'57"	0'57"	-



DRG
CAN
NOTE RJC'S
COMMENTS.

IMPROVEMENTS
MUST BE MADE
DLW
11/25/88

Dh. Wilson
H.J. Kiley
You both should
be much better
than this!!
Arrange. Affinity
11/18
CC VL Terjin
monitor daily
advise

CONRAIL



TO: V. L. TERRILL
 FROM: ROBERT A. PACKER
 SUBJECT: Reporting Problems in TMS - November 1987

DATE: December 15, 1987

MEMORANDUM

Attached are printouts listing TMS reporting errors for the Harrisburg and Philadelphia Division in the month of November, 1987.

Charlie Pass
 what will we do
 to fix this?

DRG
 12/27/87

D. I. Wilson
 M. G. Peterson
 What do you intend to
 do to correct this problem?
 It has been brought to your
 attention numerous times.

DRC

ADVISE.

LW 12/18

Note Pattern
 TVI +
 Mail 9

NA

NOT only are wrong
 times entered but
 the following show
 wrong REASONS +
 ROUTING FOR
 DELAYS.

REPORTING DIVISION
 THE ERRORS IN NOVEMBER 1987
 BY ERNST/STROCK
 (TMS)

MSG	DATE	STROCK	TMS ERR
1	19	EPS112	DIDN'T USE COLUMBIA
2	07	ENS121	DIDN'T USE COLUMBIA
3	02	MAIL0H	DIDN'T USE COLUMBIA
4	06	TV22	DIDN'T USE COLUMBIA
5	22	TV22	DIDN'T USE COLUMBIA
6	27	TV22	DIDN'T USE COLUMBIA
7	30	TV25	DIDN'T USE COLUMBIA
8	08	UIP534	DIDN'T USE COLUMBIA
9	01	USF1	DIDN'T USE COLUMBIA
10	25	USX055	DIDN'T USE COLUMBIA
11	27	USX057	DIDN'T USE COLUMBIA
12	03	UXG0	DIDN'T USE COLUMBIA
13	25	WOM123	DIDN'T USE COLUMBIA
14	02	PIML2	DIDN'T USE CORX
15	01	TV1	DIDN'T USE CORX
16	01	TV1	DIDN'T USE CORX
17	02	TV1	DIDN'T USE CORX
18	03	TV1	DIDN'T USE CORX
19	05	TV1	DIDN'T USE CORX
20	07	TV1	DIDN'T USE CORX
21	08	TV1	DIDN'T USE CORX
22	14	TV1	DIDN'T USE CORX
23	15	TV1	DIDN'T USE CORX
24	17	TV1	DIDN'T USE CORX
25	21	TV1	DIDN'T USE CORX
26	27	TV1	DIDN'T USE CORX
27	29	TV1	DIDN'T USE CORX
28	30	TV1	DIDN'T USE CORX
29	01	TV2	DIDN'T USE CORX
30	06	TV2	DIDN'T USE CORX
31	20	TV2	DIDN'T USE CORX
32	13	ENG122	DIDN'T USE ROY 3
33	13	BAENS	DIDN'T USE ROY 3
34	19	ENS112	DIDN'T USE ROY 3
35	09	ENS171	DIDN'T USE ROY 3
36	22	ENS171	DIDN'T USE ROY 3
37	10	JDE21	DIDN'T USE ROY 3
38	06	MAIL4	DIDN'T USE ROY 3
39	21	MAIL4	DIDN'T USE ROY 3
40	20	PIML0	DIDN'T USE ROY 3
41	13	PIML3	DIDN'T USE ROY 3
42	06	TV25	DIDN'T USE ROY 3
43	23	TV25	DIDN'T USE ROY 3
44	06	TV27	DIDN'T USE ROY 3
45	23	TV27	DIDN'T USE ROY 3
46	06	TV27Y	DIDN'T USE ROY 3
47	05	UCS70	DIDN'T USE ROY 3
48	00	UIP534	DIDN'T USE ROY 3
49	07	UIP540	DIDN'T USE ROY 3

Both
 PHILADELPHIA DIV

H86 DIVN

Wrong routing entered
 to show Cause

of Delay -
 - actual minutes
 of delay NOT SHOWN

A-92
BY ERROR/SYMBOL
(TMS)

DATE	SYMBOL	TMS_ERR
50 01	USF1	DIDN'T USE ROT 3
51 25	USX053	DIDN'T USE ROT 3
52 03	USG8	DIDN'T USE ROT 3
53 19	PIML9	USED COLUMBIA IN ERROR
54 04	MAIL4	USED ROT 3 IN ERROR
55 16	MAIL8H	USED ROT 3 IN ERROR
56 02	PIML2	USED ROT 3 IN ERROR
57 22	PIML2X	USED ROT 3 IN ERROR
58 00	PIML8	USED ROT 3 IN ERROR
59 23	TY1	USED ROT 3 IN ERROR
60 21	TY25	USED ROT 3 IN ERROR
61 30	TY25	USED ROT 3 IN ERROR
62 25	TY26	USED ROT 3 IN ERROR
63 21	TY27	USED ROT 3 IN ERROR
64 04	UDE254	VIA MSG DIDN'T USE ROT, ROT 3 OR HARRISBURG

A-93

EASTERN REGION
PHILADELPHIA DIVISION
THE ERRORS IN NOVEMBER 1967
BY ERROR/SYMBOL
(TMS)

9:53 TUESDAY, DECEMBER 12, 1967

DATE	SYMBOL	TMS_ERR
1 22	ENS171	DIDN'T USE GLEN
2 21	MAIL9	DIDN'T USE GLEN
3 20	MAIL9X	DIDN'T USE GLEN
4 01	TV1	DIDN'T USE GLEN
5 02	TV1	DIDN'T USE GLEN
6 03	TV1	DIDN'T USE GLEN
7 05	TV1	DIDN'T USE GLEN
8 07	TV1	DIDN'T USE GLEN
9 00	TV1	DIDN'T USE GLEN
10 14	TV1	DIDN'T USE GLEN
11 15	TV1	DIDN'T USE GLEN
12 17	TV1	DIDN'T USE GLEN
13 21	TV1	DIDN'T USE GLEN
14 27	TV1	DIDN'T USE GLEN
15 29	TV1	DIDN'T USE GLEN
16 30	TV1	DIDN'T USE GLEN
17 10	CAP10	DIDN'T USE SHORE 0
18 03	CAP13	DIDN'T USE SHORE 0
19 25	CAP15	DIDN'T USE SHORE 0
20 04	EDCA4	DIDN'T USE SHORE 0
21 05	EDCA5	DIDN'T USE SHORE 0
22 16	ENS111	DIDN'T USE SHORE 0
23 25	ENS111	DIDN'T USE SHORE 0
24 26	ENS111	DIDN'T USE SHORE 0
25 29	ENS111	DIDN'T USE SHORE 0
26 03	ENS112	DIDN'T USE SHORE 0
27 02	ENS113	DIDN'T USE SHORE 0
28 05	EXC112	DIDN'T USE SHORE 0
29 11	PIC41	DIDN'T USE SHORE 0
30 31	PIC41	DIDN'T USE SHORE 0
31 13	PIC43X	DIDN'T USE SHORE 0
32 16	PIC46	DIDN'T USE SHORE 0
33 18	PIC48	DIDN'T USE SHORE 0
34 12	SH111	DIDN'T USE SHORE 0
35 19	WOP112	DIDN'T USE SHORE 0
36 09	XMM41	DIDN'T USE SHORE 0
37 25	ALCA5	DIDN'T USE ZOO 3
38 04	CAL4	DIDN'T USE ZOO 3
39 06	CAL6	DIDN'T USE ZOO 3
40 13	EDCA3	DIDN'T USE ZOO 3
41 01	EXC111	DIDN'T USE ZOO 3
42 20	SPL721	DIDN'T USE ZOO 3
43 02	XMP27	DIDN'T USE ZOO 3
44 13	MAIL4	USED GLEN IN ERROR
45 20	MAIL4	USED GLEN IN ERROR
46 14	MAIL4X	USED GLEN IN ERROR
47 10	MAIL9	USED GLEN IN ERROR
48 11	MAIL9	USED GLEN IN ERROR
49 13	MAIL9	USED GLEN IN ERROR

EASTERN REGION
PHILADELPHIA DIVISION
THIS ERRORS IN NOVEMBER 1987
BY ERROR/SYMBOL
(THIS)

DIS	DATE	SYMBOL	THIS ERR
50	10	MAIL9	USED GLEN IN ERROR
51	24	MAIL9	USED GLEN IN ERROR
52	25	MAIL9	USED GLEN IN ERROR
53	26	MAIL9	USED GLEN IN ERROR
54	10	PIH00X	USED GLEN IN ERROR
55	03	CAAL3	USED SHORE 0 IN ERROR
56	12	CAAL3	USED SHORE 0 IN ERROR
57	12	CAED2	USED SHORE 0 IN ERROR
58	03	CAED3	USED SHORE 0 IN ERROR
59	05	CAED5	USED SHORE 0 IN ERROR
60	01	CAED1	USED ZOO 3 IN ERROR
61	04	CAED4	USED ZOO 3 IN ERROR

9:53 TUESDAY, DECEMBER 15, 1987 2

CONRAIL

RICHARD B. HASSELMAN
SENIOR VICE PRESIDENT
OPERATIONS

January 18, 1988

Mr. Wayne J. Wexler
350 Lansing Drive
Mantua, New Jersey 08051

Dear Mr. Wexler:

Chairman Crane has asked me to respond to your letter of December 14, 1987, regarding single vacation days in the Philadelphia Division Train Dispatcher's Office.

In 1986, the Philadelphia Division had a total of 22 Train Dispatchers and Assistant Chief Dispatchers who averaged 14 days of absence per month - not counting vacation days. This excessive absenteeism obviously required correction, and during August 1986, Division supervision counselled all ATDA members regarding their attendance records.

During the first Quarter of 1987, Division supervision again reviewed attendance records and sent letters of caution to those whose attendance was still excessive. At the end of the second Quarter, another review was conducted, hearings were scheduled and discipline assessed to the continued offenders.

This action decreased average absenteeism from 14 days to 4 days per month during the fourth Quarter. If this trend continues through the first Quarter of 1988, it is Division Superintendent D. L. Wilson's intention to consider restoring single vacation days.

While the ATDA agreement does not contemplate single vacation days, it is possible that they may be feasible under certain circumstances. If regular work practices

Mr. Wayne J. Wexler
January 18, 1988
Page Two

can be established in the Philadelphia office, Division Superintendent Wilson may be able to give consideration to such single vacation days -- but only when conditions permit.

Sincerely,

R. H. Haselman

cc: Mr. L. S. Crane



U.S. Department
of Transportation
Federal Railroad
Administration

1987 Safety Assessment Consolidated Rail Corporation Eastern Region

I. INTRODUCTION

Conrail's Eastern Region, headquartered at Philadelphia, PA, is comprised of the Harrisburg, New Jersey, and Philadelphia Divisions. The region includes the New York City/Newark, NJ, Philadelphia, PA, and Baltimore, MD metropolitan areas and the carrier's Washington, DC connection with rail carriers serving the southwest region of the nation. The principle traffic corridors extend from Harrisburg/Enola, PA, to Newark, NJ, Philadelphia, Baltimore, and Washington, DC. Gross annual tonnage for 1985 was over 120 million at the principle Central and Northeastern Region connections at Harrisburg. About 60 million tons were hauled between Harrisburg and Newark, with the remaining 60 million split about evenly to the Philadelphia and Baltimore/Washington routes. The Eastern Region also hauls varying amounts (up to 41 million tons) over portions of Amtrak's Northeast Corridor between Washington, DC, and New York City through Baltimore, MD; Wilmington, DE; and Philadelphia, PA. In addition to this interaction with Amtrak, this region interacts heavily with the common commuter rail carriers in the Philadelphia and New York City areas.

According to the 1985 national waybill sample (using an average net/gross conversion factor of 2.4) about 5.6 million gross tons of hazardous materials were hauled on this region between Harrisburg and Lancaster, PA, where the haul was split with about 3.1 million tons hauled to and from Philadelphia and 2.5 million tons hauled to and from the Baltimore and Washington, DC areas. In addition, about 3.3 million gross tons were hauled between Harrisburg and the New York City area, and about 2.8 million tons were hauled between Wilmington, DE and Perryville, MD.

than meaningful tests and observations. The program does not effectively determine the extent of compliance with the carrier's code of operating rules, timetable and other special instructions. Many rules critical to safety, such as those regarding manual block signal systems, interlockings, on-track maintenance practices, and vital train dispatching functions are generally neglected. There is no effective management oversight of the program.

Recommendation 1

The program should be closely examined and changes initiated to assure compliance with carrier goals and the purpose of the program as required by 49 CFR Section 217.

Recommendation 2

Regional and division operating rules staff officers should periodically conduct thorough audits of this program to assure supervisors are complying with system and regional policies and directives. Formal reports of these audits should be issued to the general manager and superintendents outlining findings with recommendations for necessary corrective actions.

Recommendation 3

Supervisory participation in the CORPS program should be required based on the type of supervisory function. The carrier should establish required categories of tests and observations for each particular supervisory assignment. The flexibility to conduct tests on any rule could be retained, but accountability for certain categories of rules and employee crafts should be carefully monitored. For example, mechanical supervisors should be required to conduct high quality blue

Recommendation

Division superintendents should take action to assure that employees who perform duties relating to the safety of train operations have received proper instruction on the operating rules.

Concern O-EA-V-12

FRA inspections disclosed that Eastern Region supervisors do not adequately assure the train and engine service employees in their charge comply with the rules of Amtrak and other carriers, but they actually permit violations of rules of the other carriers as evidenced by the Philadelphia Division trainmasters who permitted employees to operate over Amtrak without their having all the required publications in their possession.

Recommendation

The Eastern Region Manager and his superintendents should take the action necessary to assure effective operational safety interaction with Amtrak and the commuter railroads in the New York City and Philadelphia metropolitan areas.

Concern O-EA-V-13

Inspections disclosed the Eastern Region superintendents have regularly condoned violations of the carrier's operating rules in order to expedite train operations. The New Jersey Division regularly permitted violations of Rule 104 by allowing employees to open main track switches and leave them unattended; the Harrisburg Division regularly permits unauthorized movements

Philadelphia Division

The office is a well-lighted, tiered concept, modern facility equipped with two dispatching desks. Each desk is equipped for the use of only one headset which prevented the FRA inspector from monitoring all dispatching conversations.

Even more disturbing is that the chief dispatcher and the assistant chief dispatcher do not have the electronic capability of monitoring the actions of the dispatchers. Neither is there an inter-communications system between the dispatching desks, the assistant chief dispatcher and the chief dispatcher so instructions and information are shouted across the room.

The required monitoring of Amtrak radio channels and transmissions from the radio-equipped wayside detectors is disruptive. Communication between dispatchers, assistant chief dispatchers and the chief dispatcher is frequently accomplished by shouting across the room.

The dispatching workload at times was excessive to the point that there was an appearance of having made decisions which were not well thought out. Contributing to the workload are procedures which appear to be time consuming and unproductive. In lieu of issuing track and time limits for locals or switch engines a dispatcher issued a CT-401 for movement in one direction and then issued another CT-401 for movement in the opposite direction within the same limits. A movement from the siding to the main track and back to the siding necessitated issuing four authorities when one would have been sufficient to handle the entire movement.

The C Desk dispatcher supervises the operation of a small CTC "lever type" control machine by issuing instructions to a leverman. More time was required for the dispatcher to explain to the leverman the route to be used than for the dispatcher to do it. When the leverman was away from his control panel the dispatcher operated the equipment.

Dispatchers worked rest days 267 times during 1986.

Communication Responsibilities

	Desks	B	C
Radio Base Stations		1	1
Commercial Telephone		1	1
Block or Other Telephone		1	1
Wayside Detector - Radio Equipped		1	2

CONDITIONS OF CONCERN AND RECOMMENDATIONS

Concern D-EA-V-6

Dispatching functions cannot be monitored because the desks are equipped with only one headphone connector. The office environment is disrupted by shouted instructions, monitored transmissions from radio loudspeakers and transmissions from wayside detectors.

Recommendation

The office should be equipped with state-of-the-art equipment which will permit intra-office communication and monitoring of dispatching activities.

Concern D-EA-V-7

The workload factors on both desks are sufficiently high to warrant immediate corrective action by Conrail.

Recommendation

Duties not associated with on-track movements should be removed from dispatching responsibility.

Concern D-EA-V-8

There is an insufficient staff of extra-board dispatchers to provide relief for vacations, personal emergencies and sickness.

Recommendation

The division should take the action necessary to assure adequate dispatching personnel are available.



U.S. Department
of Transportation
Federal Railroad
Administration

1987 Safety Assessment Consolidated Rail Corporation *Executive Summary*

Consolidated Rail Corporation
Executive Summary, 1987 System Safety Assessment

Page 6

It was evident throughout the assessment that Conrail management at the senior level has a genuine commitment to safety, a commitment backed by Conrail's allocation of corporate resources. Conrail participates in NORAC's (Northeast Operating Rules Advisory Committee) program to develop uniform operating rules and maintains a significant number of programs related to employee, public, and operational safety. Most of these are administered by the carrier's system safety department, but regional and divisional departments have also developed independent safety programs.

Unfortunately, senior management has not succeeded in conveying this commitment through the middle management structure and has failed to provide managers with effective guidance in resolving day-to-day conflicts between safety and other corporate priorities. FRA found what appears to be a systemic fault within Conrail: too many middle and upper middle managers value "production" over "safety," and fail to translate the organizational safety commitment into effective safety programs. Some of the problems:

- Conrail's basic operational testing program has degenerated into a numbers-generating exercise in which the tests conducted are as meaningless as the records maintained of their results.

- FRA inspectors found more than 100 instances of probable underreporting of personal injuries and rail equipment accidents and incidents. In addition, Conrail inspectors report substantially fewer defects than found by Federal inspectors examining the same trackage and equipment.
- Conrail maintenance-of-way officers have taken track out of service when it did not meet FRA's minimum standards only to have transportation officers then order trains to use that very track. On one occasion during the assessment period, a train with serious defects was dispatched in full view of the Federal inspectors who found the problems and advised against the movement.
- Regional managers repeatedly asserted that primary responsibility for complying with Federal hazardous materials regulations rests either above them at the system level or below them at the divisional level.

As these examples attest, Conrail's well conceived safety programs are not being adequately implemented. But the blame cannot rest entirely on those who administer safety efforts. Operating divisions are appraised primarily on their productivity, not on their safety performance. Personnel ratings, used to determine promotions and raises, seem to include safety accomplishments on a pro forma basis rather than as a significant measure of job performance.

Like safety programs on paper, the mere presence of adequate physical resources does not guarantee good safety practices. Too often, resources are not effectively utilized. For example, maintenance-of-way machinery frequently breaks

Summary: Accident/Incident Reporting

In its audit of Conrail's 1986 personal injury cases, FRA found numerous instances in which the carrier's employee injuries were either unreported or were reported incorrectly.

Part of the problem is structural. In a potential conflict of interest, lower echelon safety officers are required to make reports of personal injuries to officers who vie for safety awards at the system level. FRA suspects that this competition may color the outcome of the personal injury statistics.

Monetary damages were significantly underestimated in reports of rail equipment accidents. Consequently, some accidents went unreported as Federal threshold levels were not reached.

Overall, FRA found no effective internal auditing of accident/incident files to ensure proper reporting.

Summary: Operating Practices

Conrail policy permits employees to copy train orders while at the controls of moving trains, which violates 49 CFR section 220.61(b). The carrier contends that these transmissions are not train orders because the information is

copied onto a non-traditional train order form. This type of contrived interpretation was a typical finding during the assessment of Conrail's compliance with Federal regulations.

In fact, FRA found several areas in which Conrail did not comply with Federal laws and regulations because, in the opinion of this agency, the carrier chose to interpret those regulations in a manner at variance with their apparent literal meaning. Those areas are as follows:

- Incorrect application of the requirements of the Hours of Service Act regarding employees engaged as hostlers, cab signal testers, bridgetenders, and employees who, by use of an electrical or mechanical device, report trains clear of absolute blocks;
- Non-compliance with Federal regulations relating to the transmission of train orders by radio;
- Failure to provide train service employees not called to operate a train with blue signal protection as required by Federal regulation; and
- Failure to include in its operating rule book all of the rules required by Federal regulations.

Conrail has no definitive guidelines for the operation of trains in manual block, non-signalized territory. This may have contributed to a number of overlaps of authority that occurred in 1986.

An analysis of the operating rules uncovered several Conrail rules that were inconsistent with other Conrail

operating rules and/or with Federal regulations. The inconsistent rules include those covering rear end marking devices, locomotive safety devices, the use of main track switches, and the condition of carrier bulletin boards.

Too many of Conrail's train dispatchers operate at an unnecessary disadvantage:

- No visual recall system for manual block territories exists, requiring that an excessive amount of information be committed to memory.
- Interfering radio, telephone, and oral communications create an overly difficult workplace.
- While software deficiencies in computer-assisted dispatch systems are being corrected, personnel continue to operate the systems without written instructions for working around the problem.
- Train dispatchers must perform clerical functions unrelated to the safe movement of trains.
- Inefficient staffing decisions have forced dispatchers to work on rest days and have led to the virtual elimination of familiarization trips.

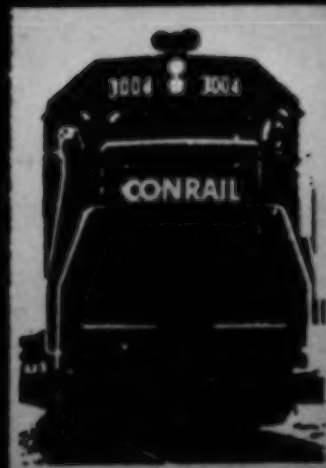
The railroad is not following Federal requirements for the inspection of rear end markers or their repair or replacement.

Summary: Protection of Workers

Conrail's compliance with blue signal protection rules is poor: 31 percent of FRA inspections resulted in a finding of

CONSOLIDATED RAIL CORPORATION

TV1



1987 Annual Report



RELIABLE

New technologies in the dispatch, monitoring, and routing of Conrail trains are contributing to greater reliability of service to customers. Computer Assisted Train Dispatching (CATD) systems are in operation at Conrail facilities in Altoona, Pa.; Buffalo, N.Y.; Harrisburg, Pa.; Indianapolis, Ind.; Lansing, Ill.; and Selkirk, N.Y. (left). The system will become operational at Dearborn, Mich. in 1988. CATD assists dispatchers in the selection of proper routes over a specific geographic area; electronically displays switch settings of tracks; and provides visual displays of train locations and movements. The result: more effective planning for the use of Conrail routes, yards, trains, and maintenance equipment. Near touch screen technology in use at the dispatch center in Selkirk, N.Y. (below) replaces the traditional keyboard with a clear menu of routing options.



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Attorney I.D.# 33803
718 Arch St., Suite 400N
Philadelphia, PA 19106
(215) 925-1105

ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS J. CARROLL : CIVIL ACTION
v. :
CONSOLIDATED RAIL CORPORATION : NUMBER 89-4650

AFFIDAVIT OF ROBERT L. CHAEFSKY, M.D.

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF _____ : SS.:

ROBERT L. CHAEFSKY, M.D., of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I am a board certified psychiatrist with a background and qualifications as set forth in my curriculum vitae attached hereto and incorporated herein as if set forth herein verbatim.

2. The facts and opinions set forth in my office notes for treatment rendered January 19, 1989 through January 14, 1991 are true and correct to the best of my knowledge, information and belief. Said opinions are incorporated herein as if set forth herein verbatim.

I hereby certify that the foregoing statements made by me
are true and correct to the best of my knowledge, information and
belief.

Sworn and subscribed to
before me this ____ day
of _____, 1991.

ROBERT L. CHAEFSKY, M.D.

NOTARY PUBLIC

ROBERT L. CHAEFSKY, M.D.

PSYCHIATRY

CURRICULUM VITAE

ROBERT L. CHAEFSKY, M.D.

Date and Place of Birth: February 21, 1940; Philadelphia, PA

Family: Married, August 1964; Sandra M. Chaefsky, B.A. in
Medical Technology, Temple University 1963.
Sons; Todd David Chaefsky, born March 11, 1970.
Dory Alan Chaefsky, born January 4, 1974.

Education:

Central High of Philadelphia, 1954 - 1958
(Director of Swing Band)

Temple University School of Liberal Arts, B.S., 1962
(Biology Honor Society)

Temple University School of Medicine, M.D., 1966
Internship: Rotating, Bryn Mawr Hospital, Bryn Mawr,
PA 1966-1967.

Medical License: State of Pennsylvania in 1967.
Diplomat, National Board of Medical Examiners, 1967.

Indian Health Service of U.S. Public Health Service, 1967-
1969. Service Unit Director 1968 -1969. Chairman of
Orientation and Planning Conference, Aberdeen, South Dakota.

Psychiatric Residency Training: Temple University Hospital,
Department of Psychiatry; included inpatient experience here
and at Eastern Pennsylvania Psychiatric Institute. Training
in drug therapy, electroconvulsive therapy, individual
psychodynamic and group therapies, behavior therapy (Dr.
Wolpe) July 1969 to June 1972.

Family therapy (Dr. Rubinstein), child psychiatry (St.
Christopher's Hospital for Children), consultation service
(medical, surgical, industrial), community mental health.
Elective in college student mental health.

Curriculum Vitae

Robert L. Chaefsky, M.D.

Lectures Given:

To Medical Students- Diagnosis and Treatment Modalities;
Depression Psychophysiologic and Conversion Reactions.
To High School Students- Sexuality and Maturity.

Committees:

Co-Chairman of the monthly Department of Psychiatry Journal Club; Curriculum Committee for Resident Training; liaison with the Psychoanalytic Steering Committee.

Experience History:

July 1972 -1974: Albert Einstein Northern Division.
Appointment as Clinical Supervisor. Full time staff position in charge of a 24 bed inpatient unit, including direct responsibility for two Psychiatric Residents.

September 1972 - 1984: "The Bridge".
Psychiatric consultant to residential and outpatients in a treatment center for adolescent drug abusers.

July 1972 -November 1987: A.C.T.
Medical Director for total outpatient drug and alcohol treatment facility. Included individual, group and family therapy plus methadone, Day Treatment and research components. Served over 400 patients.

September 1974: Temple University School of Medicine.
Teaching Appointment in the Department of Psychiatry. Supervision of Psychiatric residents, at Einstein and Temple. Assistant Clinical Professor.

November 1979 -1981: University of Pennsylvania School of Medicine, Department of Psychiatry.
Appointment as Research Associate. Worked in conjunction with substance abuse at the V.A. Hospital. Publications in preparation.

May 1981: Temple University School of Medicine.
Promoted to Clinical Assistant Professor, Department of Psychiatry. Lecturer in Substance Abuse.

Curriculum Vitea

Robert L. Chaefsky, M.D.

Member of Association for Medical Education and Research in Substance Abuse (A.M.E.R.S.A.)

Supervised Temple Medical students on psychiatric elective through the drug program.

Lectures at McNeil Laboratories about six times per year on current views of psychiatry in the community.

Participant in Grand Rounds at Northwestern Institution of Psychiatry since 1979.

On-going attendance at meetings and conferences, often as participant, related to the drug and alcohol abuse field.

Serving on and helping to implement a substance abuse training sub-committee as part of curriculum for Temple's Psychiatric Residency Training Program.

1984-Present: Psychiatric Evaluations for the State of Pennsylvania, Department of Disability Determination.

Recent Activities:

Conducted course on Addictions for Einstein Psychiatric Residents.

Lectured at Giuffre Medical Center on Methadone Treatment and the Personality of the Addict.

Lectured at Einstein North Division of Psychiatry Conference concerning Update on Substance Abuse.

Current supervision includes two Einstein residents, one Temple resident plus six week rotations of residents from Einstein at A.C.T.

Charter Member of American Academy of Psychiatrists in Alcoholism and Addictions.

Consultant to Willingboro New Jersey Schools -Evaluating students needing Special Education.

Clinical/Medical Director of P.L.U.S., Inc. (Community Living for Head Trauma Adults) since 1987.

Private practice of Psychiatry involving all age groups.

-4-

Curriculum Vitae

Robert L. Chaefsky, M.D.

Senior Psychiatrist - Achievement and Guidance Centers of America - July 1988.

Participant in the Group Health Association of America conferences - "Managing Mental Health Services: Strategies for Chemical Dependency Programs" January 1990 New Orleans, LA.

"Substance Abuse Management: Strategies That Work" June 1990 Los Angeles, CA.

Workshop - "Developing a Drug-free Workplace" May 1990 Bensalem, PA.

Member American Psychiatric Association.

R. Chaefsky
4/26/91

87-96

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD

REPORT OF PHYSICAL CONDITION

This report is authorized by law (Section 7(b) (6) of the Railroad Retirement Act). While you are not required to respond, your cooperation is needed to provide information necessary to the complete processing of the named individual's claim.

IDENTIFYING INFORMATION

1. Patient Name and Address (Applicant) <i>THOMAS J. CARROLL</i> <i>57 DELAWARE COURT</i> <i>NEWTOWN, PA. 17940</i>	2. RRB Claim No.
	3. SSA No. <i>170-34-3790</i>

INFORMATION FOR THE MEDICAL EXAMINER

An application for benefits based on disability for work has been filed. Complete information about the applicant's medical condition is essential to evaluate benefit eligibility.

It is the applicant's responsibility to present medical evidence on his own behalf from a personal physician. Therefore, any fee that may result from completion of this report is a personal matter between the applicant and the physician, UNLESS THE BOARD SPECIFICALLY CONTRACTS FOR AN EXAMINATION.

Your report may be made on this form or by a narrative on your own stationery. It is important that your report includes the following information:

- Patient complaints
- Details of medical history to allow determination of onset and onset of severity of each indicated impairment
- Objective findings
 - Clinical, laboratory or other test work (when performed) and the results or information about where the results may be obtained
- Diagnosis and prognosis for recovery or improvement
- Period applicant has been under your care and date of the most recent examination.

ONLY FURNISH INFORMATION THAT IS RELEVANT TO THE APPLICANT'S CONDITION(S).

To make your report on this form, complete ALL key items. Key items are marked with an arrow (▶). Your answer to a key item will instruct you which additional items are necessary to complete. Remember, when completing key items it is important to the Board's disability determination to record any abnormality, even if that abnormality in itself may not indicate disability.

Give your report to the applicant to be forwarded to the Board, or mail it directly to this address:

This report is ☒ Compiled Entirely From Records
☐ Based on a New Examination

Date of Last Examination 8/23/84

Present and Primary Patient Complaints (Including History of Origin and Date of Onset):

Anxiety + depression. Obsesses about the pressures of his job. Anxiety dreams persist. Easily overwhelmed. Difficulty with decision-making.

Starting early in 1988, Tom had difficulty sleeping, concentrating, memory problems + over-eating. Constant fear that he did something wrong at work - as dispatcher for Corvair. Almost paranoid regarding phone calls or mail bringing him news of mistakes he may have done.

No breaks - even for lunch. Would miss his exit off of Rt. 95 due to preoccupation with problems + pressures. Late work 1/9/89

7. Additional Patient Complaints (Including History of Origin and Date of Onset):

8. Height — 9. Weight — 10. High Weight In Past 12 Months —

11. Normal? ☒ Yes → Skip to Item 13
☐ No → Complete Item 12

12. Furnish information about any deficiency in central visual acuity (before and after correction), peripheral visual fields, or other function. Attach a copy of charts or identify the source from which results can be obtained.

EARS

NA

13. Normal? ☐ Yes → Skip to Item 16
☐ No → Complete Items 14 & 15

14. Ordinary Conversation Heard:

Right	120	Left	120
With Mechanical Device:			
Right	120	Left	120

15. Furnish information about any other functional deficiency. Attach a copy of charts or identify the source from which results can be obtained.

NOSE, THROAT, SINUSES

NA

16. Normal? ☐ Yes → Skip to Item 18
☐ No → Complete Item 17

17. Furnish Findings:

GENITO-URINARY SYSTEM

NA

18. Normal?	Yes	No
a. Kidneys	<input type="checkbox"/>	<input type="checkbox"/>
b. Bladder	<input type="checkbox"/>	<input type="checkbox"/>
c. Genitalia	<input type="checkbox"/>	<input type="checkbox"/>

19. If you checked "Yes" for each part of Item 18 → Skip to Item 20
Furnish findings for each part of Item 18 checked "No."

DIGESTIVE SYSTEM

20. Normal? Yes No

1. Mouth ☐ ☐

2. Teeth ☐ ☐

3. Gums ☐ ☐

4. Stomach ☐ ☐

5. Intestines ☐ ☐

6. Liver ☐ ☐

7. Gallbladder ☐ ☐

8. Rectum ☐ ☐

21. If you checked "Yes" for each part of Item 20 → Skip to Item 22
Furnish findings for each part of Item 20 checked "No."

NA

HERNIA

22. Present? ☐ No → Skip to Item 25
or
Abnormal History? ☐ Yes → Complete Items 23 & 24

23. Enter size, location and type:

24. Furnish findings and information about operability (if inoperable, explain):

MENTAL FUNCTIONS

25. Normal? ☐ Yes → Skip to Item 29
☒ No → Complete Items 26-28

26. Is the applicant able to manage benefit payments in his or her own best interests?
☒ Yes ☐ No

27. Describe the nature of the disorder (if there is mental retardation, show the I.Q. evaluation and date).

FIRST SAID 1/19/89 due to severe depression & anxiety due to pressures from his job as dispatcher for Conrail

28. Describe emotional reactions, conduct disturbances, orientation, insight, judgment, hallucinations, delusions, memory for recent and remote events, and evidence of mental deterioration. Include response to medication.

Difficulties with sleep, concentration, memory, and over-eating, plus feeling over-whelmed. Almost paranoid about mail being delivered or house being watched related to his job. Obsesses on his responsibilities.

R. Chaffley MD 1/24/89

MUSCULOSKELETAL SYSTEM

29. Normal? ☐ Yes → Skip to Item 32
☐ No → Complete Items 30-31

30. Enter objective evidence of active inflammation, edema, deformity, ankylosis, crepitus, and sensory or reflex loss. Describe, as appropriate, the condition of musculature, any surgical intervention, unusual posture or gait, etc. Furnish x-ray findings, if available.

NA

31. Describe the limitation of motion in each affected joint in terms of degrees (10°, 20°, etc.):

NEUROLOGICAL SYSTEM

32. Normal? ☒ Yes → Skip to Item 34
☐ No → Complete Item 33

33. Enter positive objective findings in order of importance. If there are convulsive disorders or seizures, state the character and frequency of attack and response to medication.

CARDIOVASCULAR SYSTEM

▶ 34. Furnish Vital Signs:

N/A

	Respiratory Rate	Pulse Rate	Blood Pressure	
	Standing	Standing	Systolic	Diastolic
a. Before Exercise				
b. Immediately After Exercise*				
c. 3 Minutes After Exercise				

*(unless contraindicated, then complete item 39)

▶ 35. Describe any irregularity or deficit reflected above:

▶ 36. Is there an impairment in this system?

- ☐ No → Skip to Item 44
- ☐ Yes → Complete Item 37-43

37. Describe the impairment:

38. Furnish results of x-ray and electrocardiography. include a complete interpretation showing any tracing irregularities in specific terms.

39. Furnish type and results of any exercise testing, including protocol followed. Explain if contra-indicated.

40. Furnish results of any angiographic testing.

42. Furnish American Heart Association Classification (if not described above):

43. Describe any arterial or venous insufficiency (record evidence of intermittent claudication, identified pulse deficits, or other abnormalities):

RESPIRATORY SYSTEM

44. Normal?

- ☒ Yes → Skip to Item 46
- ☐ No → Complete Item 45

45. Furnish detailed objective findings and results of pulmonary function tests (at least the VC, FEV₁, and MVV). Also include x-ray findings or sputum culture results, if available. Attach a copy of PF tests or furnish the source from which results can be obtained.

N/A

LABORATORY EXAMINATIONS

46. Have urinalysis, blood, spinal fluid, sputum, x-rays, blood count, HB., or other tests not previously covered in this form been performed in the last 12 months?

☐ No → Skip to Item 48
☐ Yes → Complete Item 47

47. Attach a copy of test results or identify the source from which they can be obtained. Highlight significant results:

N/A

DIAGNOSES AND PROGNOSIS FOR RECOVERY OR IMPROVEMENT

48. List in order of importance:

Major Depression with Anxiety
 Obsessive Compulsive Traits
 SITUATIONAL STRESS RESPONSE

Job as is currently sat up is
 unacceptable

CONTINUATION AND REMARKS

49. Use this space for further details of medical history or additional description of disabilities:

CERTIFICATION

50. Print or Type Name, Address and Telephone No. of Medical Examiner

X

Robert Chaelsky, MD.
 2336 Spruce Rd
 Bensalem, PA 19020

51. Signature

X

Robert Chaelsky, MD.

52. Date of this Report

X

9/18/89

✓ 296.2

1/19/89

Psych Eval Thomas Carroll

860 1821

57 Delaware Co Newton Pa 19540
 2nd time

This 47 y.o. married man - Tech from 1st 4th 4.0. from this - saw the flight, but then from - "trouble with sleep, reading + newsgs lost, plus over-eating." Chief dispatcher for Conrail - control center - 10¹⁰ PM 6th Apr - can't sleep during day - then goes in + eat. Has a continual dread that "I did something wrong - can't make mistakes." Has a microcassette to confirm that they said what they said they said. Work load has been doubled cutting jobs. Brought it home with him - Observed with thoughts of what might have gone wrong. Would answer the phone after awhile or wouldn't get the mail - didn't want the certified letter that might bring bad news.

There are no breaks even for lunch! Over past year started to forget things in mid conversation or the name of something. Would happen at home or shopping. Always had feeling that something bad was going to happen. Even would miss expiry on 95 - felt blank - "I'm carrying my head in my hands" spaced out. A few weeks ago - suddenly realized he was far out on 95 + couldn't remember where he was going or what time it was

At home put trash out - couldn't remember doing it. Many household chores w/ wife - felt guilty about things in dryer, but in actuality had already done it.

Walter around in same clothes he sleeps in. No interest in sex; poor concentration on following direction; can't get enthusiastic. Feels sad following the news - almost tearful. Can't tolerate waiting for things & needs to get out fast. All negative thoughts & memories.

St Joe's night college - almost 3 yrs worth. Council, Penn Central & 24 years - worked his way up.

Childhood - "Happy - parent targets - 2 younger sisters: Mom - warm, easy going, not too strict, was understanding, loving, was pretty close."

Dad - outgoing, well-biked - permissive, no drinks, easy going, softly: was pretty close. Both would be critical. Well loved sisters.

Dec self as "happy, outgoing - in school - did OK - no problem. In teen - neighborhood went down - did OK in high school, as in things I liked."

After 1st grade class, wrote brief for school paper.

No real destiny - had good friends.

Thought of studying but writing & drawing inevitable.

#2

1/30

Dream - 1st to railroad - in center city, awakened him. #2 tank car - went against fire withers - de-railed about #3 information in jail. They had arguments with hopes. Have cut down in staff - they want you to work in "rest days". Tried it but couldn't. They worried people out working their rest days. Early Nov - Exe D.J.V. wanted to bring Tom up on charges. Supervisor refused to participate. Tom was on edge since. Before Christmas - D.J.V. had it up due to shortage of help. "I'm going to get that cycle-rider," ready to go, which was aware. Another had prepared a digester to upset Tom. Even checked for the guy when he goes to the bathroom. He worried that problem will be blame on him (Tom). Was carrying new melt & cover himself. The radio transmission pre-continually being monitored & critical calls will follow.

When answer machine at home rings & no one talks, he is feels "it is there."

Takes the Prozac mid-morning - feels it is helping some - concentration better; 4 hrs - 5 hours sleep. Chores continue to overwhelm him.

Opposit- looking cars upset him - will feel he is being watched. Appears it's him and him.

It's 9 + Prozac 22, 11:50 AM - no rest.

Tom Carroll -) -

1/9

met wife at 21 - she 19 - Marriage x 14 years -
she had a boyfriend. He wasn't aware. Had been
good father - thought was good husband - with hours
were bad - she would go out herself.

Breaking up was hard for him - tried counseling
service for marriage - he went x 3 himself. Had sleep
& head ache problem.

A single x 4 years - lived with mom then wife then
New relationship - are close - get along well.
Has always been responsible, reliable, meticulous
about appearance - needs, compulsive.

Denies suicide - doesn't want to tell brother.

M.S. Alert, good, intelligent - al. anxious in
desp. no gun thought of self - down, frustrated
- has anger. But / have high & communicate with
good. Attitude good

Re/ Prague 20, 21, 22, 23, 24
- see it on

Aug 1 / Major Depressive
RCL

#5 3/29

Can feel good today at a time. Halfway there
and actually needs to move away from it. Can
return to it. Occasional panic attacks. Will
do better re: personal hygiene. Anything around
train problems or anything. He does with them gets
him upset. Sleeps are less. Will get up
at night & check the door on occasion.
Can apprehensive about the mail.
Looks better.

Re/ Prague 20, 21, 22, 23, 24
Zoflone 10, 20, 21, 22, 23, 24

RCL

#6 4/27

Saw the lawyer regarding the job - related
stress. Unrail. Dreams related to work
pressure, panic - esp. sleeping down expressing
around a leaking tank car.

Re/ Zoflone 10, 20, 21, 22, 23, 24
Prague 20, 21, 22, 23, 24

RCL

#7 5/4

Feels overwhelmed late in day - Makes lists each day
Can't get rid of feelings totally, but can involve in activities
more. Still procrastinates & does not do. Memory not as
good. M. Ben anxious re: mail delivery. Sleep is better
- was able to camp. Getting hang up with. Cal in a hotel
see in one night. Appears less anxious - still
rather "happy". Able to smile more readily.

23
2/4

Carroll Tom

-sleeps 4-5 hours - one night almost none.
Dreams - "wide car almost hitting something, another
thing - something from the office."
is taking more pride in the way he looks - gls
taking 2 Prozac/day. Being away from the
job allows him to feel better.
is depending down when hears postman still.
is "worried" that they may come to his house.
The phone calls when no one answers "terrify"
him. is able to push himself more to do
things.

Might lose his train of thought, then get
nervous - can't remember it at all.

Dreams he feel he could ever go back to this job.
They job would be 4 jobs. They consolidated it for
financial purposes, but no concern about the people.
The adversarial/antagonistic relationship with
management is bothersome.

R/Loptane 10g + 0.11 h.s.

2/20/89 sent form to V.S. Railroad Retirement Board

24
3/1/89 Back on Lexapro 11 h.s. - still early overwheeled under
stress. Anxiet - eat. Prozac 20, 11 g AM
enjoying time with wife & 2 kids. Even on vacation had
bad sleep & sleep problem.

All

Carroll Tom - 4-

#8 ✓

5/12/89

Feeling somewhat better. Can't stop
thinking about Carroll. Dream + "dread
the mail" as before; less concerned about
cars on the street.

is able to put things out of his mind when
goes camping. Personal hygiene coming
back to normal. Can see "light at end
of tunnel." Appears less depressed; still blind and
singing.
R/Loptane 10g + 0.11 h.s.
Prozac 20g + 5 AM, over. 11
- one in mouth

#9

7/6

24
Trial date set for Dec. still gets early
overwhelmed. Anxiety will interfere with memory.
Tries to push past the depression - with ship
days on Prozac. Talks about the problem,
then will cheer about it. Paranoia comes &
goes. Company had tried to stop all sweaters
this summer. Occasional feeling of "What's
the use?" 6 years it's here & there - looks good.
Appears somewhat troubled, s. anx + dep. attached
in postcard.
Continue with.

2,0

8/23

24
Doing pretty well. Congratulate + personal
feelings, want but less. Over concern
with mail + sleep. Forms filled out A12

Cannot imagine himself dealing with pressure
of Railroad job.
Lon at home. R. Prozac situation
- all better

✓
2/11

9/20/84

Met with lawyer. - case is going well. Also exercising
+ losing weight. Able to sleep pretty well. can
go nights without Lorazepam - not too bad now.
Occasional paranoia: mail arrival still upsets him.
Can push himself a little more easily. Eating habits are
better. Definitely moving in a positive direction.
- is feeling "like things are starting to work again."
Form sent 9/18 R/ Lorazepam 10 mg TID 12/50
Prozac 20 mg BID 12/50

J. MICHAEL FARRELL, ESQUIRE
Attorney I.D.# 33803
718 Arch St., Suite 400N
Philadelphia, PA 19106
(215) 925-1105

ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS J. CARROLL : CIVIL ACTION

v. :

CONSOLIDATED RAIL CORPORATION : NUMBER 89-4650

AFFIDAVIT OF BERNARD W. ALBERT, ED.D.

COMMONWEALTH OF PENNSYLVANIA : SS.:

COUNTY OF :

BERNARD W. ALBERT, ED.D., of full age, being duly sworn,
according to law, upon his oath, deposes and says:

1. I am a vocational consultant with background and
qualifications as set forth in my curriculum vitae attached
hereto and incorporated herein as if set forth herein verbatim.

3. I evaluated Thomas J. Carroll on January 31, 1990 and
the facts and opinions set forth in my report dated July 5, 1990
are true and correct to the best of my knowledge, information and
belief.

I hereby certify that the foregoing statements made by me are true and correct to the best of my knowledge, information and belief.

BERNARD W. ALBERT, ED.D.

Sworn and subscribed to
before me this ____ day
of _____, 1991.

BERNARD W. ALBERT, ED.D.

LICENSED PSYCHOLOGIST
BENJAMIN FOX PAVILION, SUITE 317
JENKINTOWN, PA 19046
(215) 572-1116

MEMBER: COUNCIL FOR THE NATIONAL REGISTER
OF HEALTH PROVIDERS IN PSYCHOLOGY

July 5, 1990

J. Michael Farrell, Esquire
718 Arch Street - Suite 400 N
Philadelphia, PA 19106

Re: Thomas Carroll
Birthdate: 8/23/41

Dear Mr. Farrell:

At your request, I saw Thomas Carroll for vocational evaluation on January 31, 1990, which consisted of a clinical interview and the administration of several tests which included the following: Ammons Quick Test, Wide Range Achievement Test, Bennett Mechanical Comprehension Test, Minnesota Clerical Test, How Supervise, Handicap Problems Inventory, IPAT Anxiety and Depression Scales. I have also reviewed the documents you provided which included the following: Medical Report, Robert Chaefsky, M.D., dated 9/18/89; Progress Notes, Dr. Patrick McLaughlin and Dr. Minati Pattanayak, dated 6/6/86 and 1/9/89; Office Notes, Dr. Eugene H. Siegel, dated 4/20/81 and 9/26/81; Office Notes, The Achievement Center, dated 9/19/89 and 9/20/89; Vocational Report, dated 8/31/89.

Mr. Carroll (5'6", 179 pounds) noted that he did experience a substantial weight gain during the latter part of 1980's which he attributed to increased consumption resulting from being anxious and upset.

Mr. Carroll indicated that he last worked in January of 1989, at which time he was assistant chief dispatcher for Conrail with earnings of approximately \$41,000.00 annually, plus occasional overtime. He held the position for approximately three years and prior to that alternated as assistant chief dispatcher and as train dispatcher. In that latter capacity, he earned a pay rate of \$157.00 per diem or about \$19.60 hourly. He estimated a total of approximately 19 years working in these capacities. His duties included keeping track of the inventory of engines and their locations and to assure a level of readiness. He also maintained records of availability of train crews and designated areas. He also maintained records of the inventory of equipment such as caboose and rear markers etc. He issued instruction by telephone and by radio to railroad yards, train crews, etc. He indicated there were two to

three dispatchers to whom he issued ongoing instructions. He received information from multiple sources by phone, radio, by computer and by fax machine. He also received instruction from various management personnel which he estimated amounted to approximately a dozen different sources such as the division and assistant division superintendents, the regional and division supervisor of train operations, the terminal superintendent, etc.

Mr. Carroll went on to explain that he determined traffic flow which included which trains were to be moved and in which order. Earlier, he had been involved in both passenger and freight service.

Mr. Carroll advised that the nature of the work required alternate sitting, standing and walking in addition to making active use of both upper extremities. There was a frequent need for bending and for maintaining sustained periods of visual and auditory concentration. It was necessary for him to retain substantial data in his mind and to make quick spontaneous decisions regarding safety and business factors. Variables such as weather and breakdowns, fires and community disasters prompted additional problems and complications. Over the years, he felt increasing pressure on the job as support personnel were reduced in number and in location. There was increased dependency upon data and less upon field support.

Pressures and concerns on the job resulted in a disturbed sleep pattern. In the latter portion of 1980's he felt increasingly that he would be blamed for some terrible mishap. He began dreading the telephone for fear of bad news. He felt so intimidated he admitted to his reluctance to answer the telephone and secured an answering machine to screen his calls. He also developed a dread of receiving the mail as he was fearful of certified mail indicating charges which would be leveled against him. He began carrying a concealed tape recorder which he used when talking to management personnel. He had a fear of not being accurately or correctly quoted. He began to suffer memory lapses at work and at home. He developed word-finding difficulties. At times he began doubting that he did what he was supposed to at designated times. He finally consulted his doctor when his episodes became increasingly frequent in the late 1980's. After consultation with his family physician, he was referred for psychological and then psychiatric consultations. He was placed on medication because of the extreme stress to which he was subjected and instructed to remain off duty. His treatment continued by visit and by telephone.

Mr. Carroll initiated employment with the railroad in February of 1965 in the capacity of tower or block operator. He was responsible for a designated section of track and was also well-acquainted with safety rules and practices. He controlled switches and signals and was on this assignment about 18 months. He also reported having worked approximately three years in ticket sales and in freight billing. There was substantial paperwork and he checked shipments and visited customers etc.

Mr. Carroll returned to his tower work until 1970 when he was

promoted to train dispatcher. At one time, he was the Eastern Region Supervisor of Train Operations and held the post approximately four years from 1973 until 1977. At that time, he was responsible for four divisions and had a clerk to assist with the integration of paperwork. He did report having received an organizational demotion to assistant chief dispatcher as a result of cost containment and a constriction in the management staff organization. This demotion occurred at the time he had also received a 5.5% pay increase.

Prior to his railroad work, Mr. Carroll worked for the Acme and American Stores as a cashier and stock clerk for seven to eight years.

He served six months active duty in the National Guard and thereafter reserve time of six years before receiving his Honorable Discharge.

He graduated high school in 1959 in the academic program. He subsequently attended St. Joseph's University on a part-time basis where he accumulated about 96 credits which was equivalent to the status of a junior. He discontinued his academic efforts because of complications associated with his working schedule. His other training was through on the job experiences.

He is married and has four children.

Historically, he reported satisfactory health in the past. His first significant health confrontation occurred in the late 1980's as already has been described. Mr. Carroll continues under psychiatric care.

At the time of the evaluation, he explained that the medication did help mitigate the effects of his unpleasant dreams. However, he continues to re-live some prior accidents which have occurred on the railroad. While he continued to feel depressed, he felt there was a modification in the severity because of the effects of medication. He did go on to admit that he becomes easily overwhelmed, particularly when asked to do more than one thing at a time. He is subject to severe episodes of tension and anxiety, sometimes triggered by unpleasant happenings in the news. He also finds himself inordinately sad when discovering news events well beyond his control. He has been very withdrawn but feels that his behavior pattern has improved. He does interact with his neighbors. His capacity to concentrate tends to vary but typically he is most comfortable handling only one thing at a time. He continues to have difficulty coping with detail. His tolerance for newspaper reading tends to fluctuate. He is easily distracted from a conversation or from watching a television program. Most of his time is now spent with family. He once again remarked that he becomes overwhelmed if his wife indicates the need for doing more than one thing at a time. He also advised that he counts generally on her stability for reassurance. He is now able to leave his house independently explaining he was hesitant to do so in the past. He will perform some errands and selective household chores, but not those where he would be vulnerable to making mistakes.

Mr. Carroll advised that he is driving. For some time, he lost interest in his personal appearance and would not bother to change his clothing nor bother to shave. He indicated this has now improved.

With regard to the future, Mr. Carroll advised his physician has not suggested any type of work nor has he given it much thought. His wife is a registered nurse. He went on to remark that he is apprehensive about coping with the pressures of work such as conforming to production and time schedules. He felt that if the pressures became excessive he would have the impulse to simply leave.

At home he does perform selective household chores and assists in the preparation of meals. He described the roles at home as having been reversed. He does the food shopping and visits his child's school to converse with the teacher.

At home he plays with his son and watches television and listens occasionally to music. He takes walks and occasionally bowls with his wife. He does occasionally attend special family functions or his wife's functions from work.

On the Ammons Quick Test, a verbal/perceptual test of general intelligence, he placed at the upper end of the average range.

On the Wide Range Achievement Test, his reading and spelling proficiencies were beyond the 12th grade level and his skill in math was at the 9th grade level. On the reading portion of the test, he demonstrated a well-developed ability to draw upon both phonetics and recognition as reading tools. On the spelling portion of the test, his cursive writing was neat, legible and attractive in appearance and his proficiency here was consistent with his reading skill. On the math portion of the test, he was able to deal with problems involving addition, subtraction, multiplication, division, fractions, decimals and percentages though with a considerable amount of error, much of which would be attributed to a compromise in concentration rather than lack of familiarity with the process.

On the Minnesota Clerical Test, which measures speed and accuracy in tasks relating to clerical function, his scores were uniformly far below average (1st percentile and 8th percentile) on the number and name subtests respectively when compared with experienced males engaged in commercial occupations. His work was done relatively slowly with a high degree of error which was more pronounced on the number subtest. Again considering his language skills and math proficiency his very marginal performance here was attributed to an inability to attend and concentrate.

On the Bennett Mechanical Comprehension Test, which measures the ability to perceive and understand the relationship of physical forces and mechanical elements in practical situations, his score was far below-average (3rd percentile) when compared with industrial norms.

On the How Supervise Test, which measures one's knowledge and insight into human relations in industry, his score was above-average (70th percentile) when compared with lower-level supervisors, though well-below average (30th percentile) when compared with higher-level management personnel.

On the IPAT Depression Scale, Mr. Carroll placed in the 97th percentile when compared with the general adult population and in the 63rd percentile when compared with the clinical population of depressives. On the IPAT Anxiety Scale, he placed in the 99th percentile when compared with the general adult population.

On the Handicapped Problems Inventory, he noted that he finds himself more easily discouraged, socially constricted with his occupational confidence compromised. He went on to describe himself as being generally unhappy and now feeling inferior. He expressed concern about an early death, feels lacking in friendship and complained of loneliness. He admitted to being concerned about his personal appearance and with his tendency now to "hang back." He feels lacking in will power, feels in greater need of help from others and generally considers himself more secure and comfortable with family than among others.

From an exertional perspective, the nature of the work he customarily pursued more commonly ranged between the sedentary and light classifications. Sedentary work is defined as lifting 10 pounds maximum and occasionally lifting and/or carrying such articles as dockets, ledgers and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required only occasionally and other sedentary criteria are met. Light work is defined as lifting 20 pounds maximum with frequent lifting and/or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be only a negligible amount, a job is in this category when it requires walking or standing to a significant degree or when it involves sitting most of the time with a degree of pushing and pulling of arm and/or leg controls. Other requirements for the work he pursued included an ability to understand and apply procedures and regulations and to coordinate them with special functions, activities and events. This work also required an ability to orally communicate technical or operational information. It also pre-supposed an ability to assume responsibilities involving a number of simultaneous activities. The nature of the work required an ability to adjust to circumstances and situations involving the direction, control and planning of various activities and events and the activities of others in addition to interacting with peers, subordinates and superiors in meeting the stated goals and objectives.

Based upon findings in this evaluation and the documents reviewed, it is evident that at the time of this evaluation, his emotionally impoverished state and the attending functional limitations and impairments collectively indicate he is not in a job-ready state.

prepared to meaningfully respond to the traditional daily demands of competitive employment regardless of exertional level. This includes factors such as consistency and regularity in attendance and punctuality, an ability to routinely meet reasonable productivity standards, a capacity to relate effectively to co-workers, supervisors, the general public, etc. Therefore, his loss in earning capacity is most equitably represented by the reported annual salary he had been earning at the time of his separation from the job which was \$41,000.00 annually. In the event his circumstances remain unchanged, this figure would represent his annual loss in earning capacity for his 16 remaining occupational years until normal retirement at age 65. The estimate is based upon the wage rate indicated and is therefore exclusive of future earnings resulting from rises in wages or productivity or the effect of inflationary factors. It is also exclusive of any earnings lost from the time of his initial separation until the present.

At such time as he might improve sufficiently through psychiatric care to consider efforts at occupational re-entry, initial participation in transitional programs such as engagement in therapeutic recreation, selective participation in volunteer services, etc. would provide a less threatening milieu in which he might more comfortably test his emotional tolerances. Thereafter, efforts at occupational re-entry would more prudently be restricted to more simply routinized types of tasks where decision making would be more modest and where consequences of error would be modest in magnitude. Representative jobs of lesser scope and responsibility with more modest levels of stress would include tasks such as that involving routine checking and recording, jobs involving sorting, inspecting and stock-checking, tasks involving information verification, etc. with pay rates ranging from approximately \$6.00-\$9.00 hourly which on an annual basis would amount to earnings ranging from approximately \$12,500.00-\$18,700.00 in contrast to his premorbid earning capacity as has already been indicated.

It should also be recognized that his emotionally brittle state, his need for work of a more modest level of responsibility and at a reduced rate of pay will place him in a disadvantaged posture competing for a reduced range of jobs with his non-disabled counterparts despite a very positive and impressive work history. The nature of his circumstance will also make him more vulnerable to future work interruption and, of course, having a compromising effect upon promotional opportunities.

Please advise if you have any questions concerning this report.

Sincerely yours,

Bernard W. Albert

BERNARD W. ALBERT, Ed.D.

BWA/rmb

dictated but not read

FILED JUL 31 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALAN CARLISLE	:	CIVIL ACTION
	:	
v.	:	
	:	
CONSOLIDATED RAIL CORPORATION	:	NO. 88-8752

MEMORANDUM AND ORDER

GAWTHROP, J.

Plaintiff, Alan Carlisle, instituted this suit under the Federal Employee's Liability Act, 45 U.S.C. §51 et seq. ("FELA"), against his former employer, Consolidated Rail Corporation ("Conrail"), alleging that stressful working conditions at Conrail caused him to suffer from depression, insomnia, and sleepwalking. Conrail has moved for summary judgment, claiming that Mr. Carlisle has not stated a claim cognizable under the FELA. For the reasons stated in this memorandum, I will deny Conrail's motion.

BACKGROUND

Mr. Carlisle began working for Conrail in 1973. He contends that, in 1983, his train dispatching duties began to include increased paperwork, computer-work, telephone communicating, and responsibility for moving trains. Despite lodging numerous complaints with Conrail officials, he claims that work conditions continued to worsen to the point where in 1988, he was working 14-15 hour days, without any breaks for lunch or relaxation, seven days a week. He further contends that he was pressured by Conrail officials into writing false reports

concerning Conrail's adherence to safety standards. Mr. Carlisle's complaint alleges that his increased workload caused him to live in fear of causing a tragic accident, and that as a result, he was forced to quit his job. He claims that at the time he terminated his employment, in 1988, he suffered from insomnia, sleep-walking, anxiety, paranoia, disorientation, and depression, and was on the verge of a nervous breakdown.

Mr. Carlisle has submitted the affidavits of five train dispatchers who worked with him at Conrail. Those affidavits support Mr. Carlisle's contentions that working conditions at Conrail during Mr. Carlisle's employment included long hours, few days off, few breaks, and extreme pressure to perform safely a dangerous job. Mr. Carlisle has also submitted the affidavit of his replacement at Conrail, which alleges that stressful working conditions caused him to have a nervous breakdown seven months after taking over Mr. Carlisle's job.

DISCUSSION

The FELA states that railroads engaged in interstate commerce "shall be liable in damages to any person suffering injury while he is employed by such carrier . . . for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier." 45

1. Six of Mr. Carlisle's co-workers at Conrail have also instituted suits against Conrail, alleging that work-related stress at Conrail has caused them to suffer injuries which are compensable under the FELA, including heart attacks, depression, ulcers and nervous breakdowns.

ENTERED: 2-31-90

CLERK OF COURT

U.S.C. §51 et seq. In Wrie v. Thompson, 337 U.S. 163, 181-82 (1949), the Supreme Court emphasized the breadth of the language and the coverage of this provision:

The language is as broad as could be framed . . . The wording was not restrictive as to . . . the particular kind of injury resulting. To read into this all-inclusive wording a restriction as to . . . the particular sorts of harms inflicted would be to contradict the wording, the remedial and humanitarian purpose and the constant and established course of liberal construction of the Act followed by this Court.

Mr. Carlisle contends that his claim falls under the FELA's broad language. Conrail asserts that plaintiff's claim should be dismissed for three reasons. First, defendant contends that emotional distress claims are not cognizable under the FELA. Secondly, it asserts that a precipitating physical injury is required to state an emotional distress claim under the FELA. Lastly, it asserts that work-related stress cannot form the basis of a FELA claim.

1. Emotional Distress Claims Under The FELA

The threshold issue in this case is whether emotional distress claims are cognizable under the FELA.² In Atchison,

2. Conrail cites numerous cases in which courts have denied recovery under FELA to plaintiffs alleging claims of intentional infliction of emotional distress. See Netto v. Amtrak, 863 F.2d 1210 (5th Cir. 1989) (claim for intentional infliction of emotional distress not cognizable under the FELA); Hammond v. Terminal Railroad Association of St. Louis, 848 F.2d 95 (7th Cir. (continued...))

Topeka and Santa Fe Railroad Co. v. Buell, 480 U.S. 557, 568 (1987), the Supreme Court stated that emotional injuries may be cognizable under the FELA, but remanded the case to the lower court for "exacting scrutiny of the facts of the case."

Hence, negligent infliction of emotional distress claims may be cognizable under the FELA, depending on the facts of the case. See e.g. Taylor v. Burlington Northern R. Co. 787 F.2d 1309 (9th Cir. 1986) (claim for emotional injuries based on harassment at workplace cognizable under FELA); Teague v. National Railroad Passenger Corp., 708 F.Supp 1344 (D. Mass. 1989) (claim for emotional injuries based on harassment at workplace cognizable under FELA); Althoff v. Consolidated Rail Corp., No. 87-4384, slip. op. (E.D. Pa. June 13, 1988) (Gawthrop, J.) (negligent infliction of emotional distress claim cognizable under the FELA in case where crane operator accidentally killed fellow employee); Malke v. New Jersey Transit Rail Operations, Inc., 677 F.Supp. 135 (S.D.N.Y. 1987) (claim for negligent infliction of emotional distress cognizable under the FELA where job harassment caused suicide); Gillman v. Burlington Northern Railroad, 673 F.Supp. 913 (N.D. Ill. 1987) (employees within the

2. (...continued)
1988), cert. denied ___ U.S. ___, 109 S.Ct. 1170 (1989) (no claim for deliberate infliction of emotional distress under the FELA); Adkins v. Seaboard System Railroad, 821 F.2d 340 (6th Cir. 1987), cert. denied ___ U.S. ___, 108 S.Ct. 452 (1987) (only negligent conduct, not intentional conduct, gives rise to a FELA claim). Mr. Carlisle's claim in this case, however, is one for negligent infliction of emotional distress.

zone of danger of an accident that killed fellow employee stated a claim under the FELA).

2. Physical Injury

Conrail asserts that a precipitating physical injury is required to state an emotional distress claim under the FELA. In Bullard v. Central Vermont Ry., 565 F.2d 193 (1st Cir. 1977), the First Circuit held that only emotional distress resulting from physical injury was compensable under the FELA. In Moody v. Maine Central R.R. Co., 620 F.Supp. 1472, 1473 (D. Me. 1984), aff'd 823 F.2d 693 (1st Cir. 1987), the district court held that "there can be no recovery for emotional disturbance under the FELA without some precipitating physical injury." On appeal, however, the First Circuit noted that the Supreme Court's decision in Buell casts doubt on whether physical injury is required to state an emotional injury claim under the FELA.

"While the traditional rule was that a plaintiff could not recover for mental injuries unconnected with actual or threatened impact, the majority of jurisdictions have abandoned that rule." Buell, 480 U.S. at 569 n.20. Many recent cases have allowed FELA claims for negligent infliction of emotional distress where there is no precipitating physical injury. See e.g. Taylor v. Burlington Northern R. Co., 787 F.2d 1309 (9th Cir. 1986) (FELA claim recognized where injury is wholly emotional); Teague v. National Railroad Passenger Corp., 708 F.Supp. 1344 (D. Mass. 1989) (FELA claim recognized where there

is some objective physical manifestation); Halko v. New Jersey Transit Rail Operations Inc., 677 F. Supp (S.D.N.Y. 1987) (FELA claim recognized where there is some objective physical manifestation).

The majority rule, today, is to allow recovery for "mental distress [when] certified by some physical injury, illness, or other objective physical manifestation." Prosser and Keeton on Torts, sec. 54 at 364 (5th ed. 1984). Plaintiff's allegations of insomnia and sleepwalking are, in my view, "objective physical manifestations" which satisfy the physical injury requirement for stating an emotional distress claim under the FELA.

3. Work-Related Stress

Conrail also contends that work-related stress cannot form the basis of a FELA claim. Defendant relies on Kraus v. Consolidated Rail Corp., 723 F.Supp. 1073 (E.D. Pa. 1989), in which Conrail workers who alleged emotional distress from dangerous working conditions were held not to have a claim cognizable under the FELA. The court stated that "plaintiffs, who allegedly suffer from stress-related physical or purely emotional injuries or illnesses caused by their general working conditions, fail to state a claim under the FELA." Id at 1090.

However, many cases allow FELA claims based on work-related stress. In McMillan v. Western Pacific Railroad Co., 357 P.2d 449 (Cal. 1960), the Supreme Court of California held that a train dispatcher who suffered a nervous collapse because of

stressful working conditions stated a claim cognizable under FELA. In Barker v. Consolidated Rail Corporation, No. 85-5304 slip op. (E.D. Pa. January 24, 1986) (Weiner J.), a case involving a train dispatcher who worked with Mr. Carlisle at Conrail, this court held that a plaintiff stated a claim under the FELA where his heart attack was allegedly induced by excessive job stress. So too, in Welby v. Consolidated Rail Corporation, 671 F. Supp. 1016 (M.D. Pa. 1987), plaintiff's claim that his heart attack was caused by improper and unsafe working conditions stated a claim under the FELA. See also Yawn v. Southern Ry. Co. 591 F.2d 312 (5th Cir. 1979) (employees' allegation that railroad failed to provide sufficient help and adequate time for employees to do their work stated a claim under the FELA).

There is also ample caselaw holding that a claim for negligent infliction of emotional distress based on harassment at the workplace is cognizable under the FELA. See Taylor v. Burlington Northern R. Co., 787 F.2d 1309 (9th Cir. 1986) (harassment at work recognized as negligent infliction claim under the FELA); Buell v. Atchison Topeka & Santa Fe Railway Co., 771 F.2d 1320 (9th Cir. 1985) (harassment at work recognized as negligent infliction claim under the FELA); Teague v. National Railroad Passenger Corp., 708 F.Supp. 1344 (D. Mass. 1989) (embarrassment and humiliation at work recognized as negligent infliction claim under the FELA); Halko v. New Jersey Transit Rail Operations, Inc., 677 F.Supp. 135 (S.D.N.Y. 1987)

(harassment on the job that led to suicide recognized under the FELA as a negligent infliction claim).

This court does not find a significant distinction under the FELA between work-related stress that causes a heart attack and job stress that leads to nervous conditions such as insomnia, sleepwalking, and depression. Just as work-related stress can lead to a heart attack, so too, such stress can lead to a nervous breakdown. This court sees no reason why the person who suffers a heart attack should have a claim under the FELA, while the person who has a nervous breakdown, does not.

This court also sees no difference between a negligent infliction of emotional distress claim based on harassment at the workplace, and a work-related stress claim such as Mr. Carlisle's. Harassment and job stress are similar - both may result in emotional injuries to employees, and both are often within the control of the employer. In my view, emotional injuries caused by stressful working conditions, which are accompanied by verifiable objective physical manifestations, constitute valid claims under the FELA.

CONCLUSION

Under Fed. R. Civ. P. 56(c), summary judgment will be granted only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary

judgment as a matter of law." The moving party bears the initial burden of demonstrating an absence of a genuine issue of material fact. Celotex v. Catrett, 477 U.S. 317, 322 (1986). All reasonable inferences are to be drawn in favor of the non-moving party. Adickes v. Kress & Co., 398 U.S. 144 (1970)

To create a question of fact for a jury in a negligence claim under the FELA, "the evidence may be minimal but it must be sufficient to provide the jury with some rational basis for concluding that some negligence of the railroad proximately contributed to the accident. The issue of negligence may not be submitted to the jury solely on the basis of conjecture."

Albergo v. Reading Co., 372 F.2d 83 (3d Cir. 1966), cert. denied 386 U.S. 983 (1967).

In this case, where the plaintiff has alleged that stressful working conditions at Conrail have caused him to suffer emotional injuries, which are evidenced by verifiable objective physical manifestations, I conclude that there is ample rational basis for a jury to decide that Conrail's negligence caused Mr. Carlisle's injuries.

Hence, the order which follows.

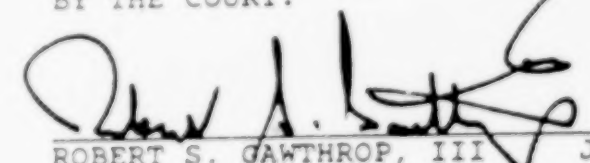
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALAN CARLISLE	:	CIVIL ACTION
	:	
v.	:	
	:	
CONSOLIDATED RAIL CORPORATION	:	NO. 88-8752

ORDER

AND NOW, this 27th day of July, 1990, upon consideration of defendant Consolidated Rail Corporation's Motion for Summary Judgment, the response thereto, and oral argument, it is hereby ORDERED that the Motion is DENIED.

BY THE COURT:


ROBERT S. GAWTHROP, III J.

BEST AVAILABLE COPY

Supreme Court, U.S.

F I L E D

NOV 27 1991

OFFICE OF THE CLERK

No. 88-2551

ORIGINAL

SUPREME COURT OF THE UNITED STATES

October Term, 1991

JOHN CARROLL

Petitioner,

CONSOLIDATED RAIL CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

STATE OF RESPONDENT IN OPPOSITION

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South 4th Walnut Streets

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Attorney for Respondent,

Consolidated Rail Corporation

QUESTION PRESENTED FOR REVIEW

Was summary judgment properly granted on the issue of negligent infliction of emotional distress since there was no accident, injury or near miss to Petitioner or anyone else?

PARTIES TO THE PROCEEDING

Petitioner, Thomas J. Carroll, was the plaintiff in the District Court and the appellant in the Court of Appeals. Respondent, Consolidated Rail Corporation, was the defendant in the District Court and the appellee in the Court of Appeals.

Respondent has no parent corporation(s). It has the following affiliates and non-wholly-owned subsidiaries:

- The Akron and Barberton Belt Railroad Company
- Albany Port Railroad Company
- The Belt Railway Company of Chicago
- Calumet Western Railway Company
- Chicago and Western Indiana Railroad Company
- Indiana Harbor Belt Railroad Company
- The Lakefront Dock and Railroad Terminal Company
- Nicholas, Fayette and Greenbrier Railroad Company
- Peoria and Pekin Union Railway Company
- Pittsburgh, Chartiers and Youghiogeny Railway Company
- Railroad Association Insurance, Limited
- Trailer Train Company
- Transportation Data Exchange, Incorporated

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No. 91-6253

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1991

THOMAS J. CARROLL,

Petitioner,

v.

CONSOLIDATED RAIL CORPORATION,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

BRIEF OF RESPONDENT IN OPPOSITION

Respondent, Consolidated Rail Corporation, respectfully requests that the Court deny the Petition for Writ of Certiorari seeking review of the judgment order of the United States Court of Appeals for the Third Circuit entered on August 9, 1991.

STATEMENT OF THE CASE

For almost 19 years, Thomas J. Carroll ("Carroll") worked as a train dispatcher. In 1986, he was promoted to Assistant Chief Train Dispatcher at Delaware Avenue and held that position until January 9, 1989. As Assistant Chief Train Dispatcher, Carroll was responsible for monitoring trains and their freight, maintaining records of inventories, and issuing directions over the radio to railroad yards and train crews.

On January 9, 1989 Carroll reported to his usual assignment. While taking his turn-over instructions from John MacPherson ("MacPherson"), Carroll suddenly realized that they were sitting on the left side of the room. MacPherson explained to him that they were using the left side of the room because the telephones on the right were not working. Behind Carroll, someone was screaming on the phone about a misdirected car and two other dispatchers were arguing about a train consist.

Carroll could not cope with the pandemonium in the office so he got up and walked in and out of the room several times. Upon returning to the room, he found phones ringing and radios blaring. It was then that he decided to call the daylight assistant chief dispatcher and ask him to come in and take his place. Carroll told his supervisor that he was sick and went home. Since that day, he has not returned to work.

Carroll asserts, as the basis for his claim, that the atmosphere in the office was extremely chaotic and tense. Believing that he was continually harassed and threatened, Carroll lived in continual dread of being blamed for some problem regardless of his involvement in the situation. Single day vacations and breaks during his shift, he says, were not permitted. Carroll also claims that there was insufficient support personnel to meet his job requirements and that at times he received directives ordering him to violate rules, safety procedures and federal law.

Carroll's injuries are purely emotional and psychological. He has been medically diagnosed as suffering from major depression with anxiety, obsessive compulsive traits and situational stress response.

REASONS FOR DENYING THE WRIT

The Petition for Writ of Certiorari should be denied because the Court of Appeals for the Third Circuit properly affirmed the District Court's grant of summary

judgment on the issue of negligent infliction of emotional distress. Moreover, the holding of the District Court is narrow, applying only to the facts in this case. The decision does not have far-reaching consequences and there are no special or important reasons for granting certiorari. Contrary to the assertions of the Petitioner, there is no conflict among the courts as to what constitutes negligent or intentional infliction of emotional distress.

A. The Case Turns On Its Particular Facts and There Are No Special Or Important Reasons for Granting Certiorari

What Petitioner seeks is to have the Court review the factual conclusions of the lower courts and analyze their propriety. As this Court has held, it does not "grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925). The District Court's opinion was narrow and turned on the facts presented. The decision is important only to the litigants in this case. As such, there are no special or important reasons favoring the exercise of the Court's discretionary power of review.

B. It Is The General Consensus Of The Courts That There Can Be No Recovery For Negligent Infliction Of Emotional Distress Without Some Precipitating Physical Injury, Accident, or Near Miss

The Federal Employers' Liability Act ("F.E.L.A.") is a federal negligence statute which applies to the railroad industry. 45 U.S.C. §§51-60. Liability is not absolute, but predicated on a finding of negligence. *Brady v. Southern Ry.*, 320 U.S. 476, 484 (1943); *Inman v. Baltimore & O. R.R.*, 361 U.S. 138, 140 (1959). The Court, in *Atchison, T. & S. F. Ry. v. Buell*, 480 U.S. 557 (1987), provided guidelines to be followed in dealing with claims for emotional distress under the F.E.L.A. The viability of a claim for emotional distress does not

necessarily rest upon a pure question of statutory construction; but rather, as the Court stressed, on developing a full record on the exact nature of the injury and the character of the tortious activity. *Id.* at 568. Once the record has been developed, the appropriate legal principles based on "common-law concepts for negligence and injury," *Urie v. Thompson*, 337 U.S. 163, 182 (1949), are to be applied to the particular facts at hand. *Atchison, T. & S. F. Ry. v. Buell*, 480 U.S. at 570. This is exactly what was done by the District Court in granting summary judgment and by the Court of Appeals in affirming its ruling.

Courts dealing with the issue of negligent infliction of emotional distress under the F.E.L.A. have uniformly held that there must be a precipitating physical injury, accident or near miss giving rise to an actual fear of injury to allow recovery. *See, e.g., Outten v. National R.R. Passenger Corp.*, 928 F.2d 74 (3d Cir. 1991); *Holliday v. Consolidated Rail Corp.*, 914 F.2d 421 (3d Cir. 1990), *cert. denied*, — U.S. —, 111 S. Ct. 970 (1991); *Kraus v. Consolidated Rail Corp.*, 723 F. Supp. 1073 (E.D. Pa. 1989), *appeal dismissed*, 899 F.2d 1360 (3d Cir. 1990); *Gaston v. Flowers Transp.*, 675 F. Supp. 1036 (E.D. La. 1987), *aff'd*, 866 F.2d 816 (5th Cir. 1989); *Gillman v. Burlington N. R.R.*, 673 F. Supp. 913 (N.D. Ill. 1987), *aff'd*, 878 F.2d 1020 (7th Cir. 1989); *Lancaster v. Norfolk & W. Ry.*, 773 F.2d 807 (7th Cir. 1985), *cert. denied*, 480 U.S. 945 (1987); *Moody v. Maine Central R.R.*, 620 F. Supp. 1472 (D. Me. 1985) *aff'd*, 823 F.2d 693 (1st Cir. 1987); *Adkin v. Seaboard System R.R.*, 821 F.2d 340 (6th Cir. 1987), *cert. denied*, 484 U.S. 963 (1987); *Finn v. Consolidated Rail Corp.*, 622 F. Supp. 41 (D. Mass. 1985), *aff'd*, 782 F.2d 13 (1st Cir. 1986); *Beanland v. Chicago, R. I. & Pac. R.R.*, 345 F. Supp. 220 (W.D. Mo. 1972), *rev'd*, 480 F.2d 109 (8th Cir. 1973); *Seis v. Chicago & N. Transp. Co.*, 736 F. Supp. 962 (E.D. Wis. 1990); *Amendola v. Kansas City S. Ry.*, 699 F.Supp. 1401 (W.D. Mo. 1988); *Angst v. Great Northern Ry.*, 131 F. Supp. 156 (D. Minn. 1955).

Petitioner, in the writ and accompanying record presented to the Court, clearly demonstrates that this case does not deal with an employee who was either involved in or witness to any accident or injury. Likewise, Carroll has not described any specific event that caused him to fear for his own safety or the safety of others. The January 9, 1989 incident Carroll relates involved only inoperative or ringing phones, blaring radios, misdirected cars and disagreements over a crew consist. (Respondent's Appendix at B1-B2.) Because the record in this case is devoid of any accident, injury or near miss to Carroll or anyone else, Petitioner cannot sustain a claim for negligent infliction of emotional distress.

C. Courts Have Uniformly Held That Recovery For Intentional Infliction Of Emotional Distress Is Based Upon Establishing Outrageous Conduct

Although Petitioner complained of a tense atmosphere in his office, similar to a totalitarian state, he did not plead the tort of intentional infliction of emotional distress.¹ In order to recover for intentional infliction of emotional distress, Carroll must prove that he was subjected to outrageous conduct and unconscionable abuse. Restatement (Second) of Torts §46; *Atchison, T. & S. F. Ry. v. Buell*, 480 U.S. at 567 n. 13; *Kraus v. Consolidated Rail Corp.*, *supra.*; *Adams v. CSX Transp.*, 899 F.2d 536 (6th Cir. 1990); *Elliott v. Norfolk & W. Ry.*, 722 F. Supp. 1376 (S.D.W.V. 1989), *aff'd*, 910 F.2d 1224 (4th Cir. 1990); *Netto v. Amtrak*, 863 F.2d 1210 (5th Cir. 1989); *Quitmeyer v. South Eastern Pennsylvania Transp. Auth.*, 740 F. Supp. 363, 368 (E.D. Pa. 1990); *Simmons v. Norfolk & W. Ry.*, 734 F. Supp. 230

1. The Court in *Atchison, T. & S. F. Ry. v. Buell*, 480 U.S. at 568 n. 16, states "[t]he tort of intentional infliction of mental distress as described in §46 of the Restatement [(Second) of Tort] can be safely characterized as the general rule in the United States. . . ."

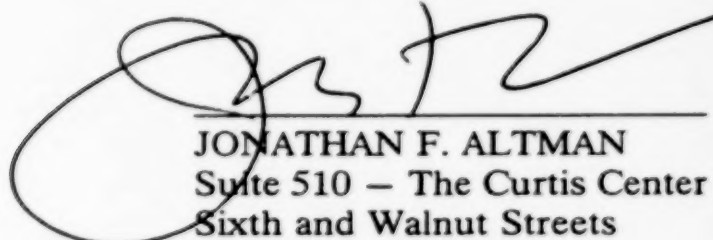
(W.D. Va. 1990); *Harris v. Norfolk & W. Ry.*, 720 F. Supp. 567 (W.D. Va. 1989).

Carroll never described any specific incident where he was harassed or unfairly criticized. The much feared phone or mail notification of complaints against him never arrived. The only incident Carroll does relate is the one that occurred on January 9, 1989 where there seemed to be pandemonium in the office with people around him yelling and arguing. If being cursed, yelled or screamed at is not actionable under the F.E.L.A., *Simmons v. Norfolk & W. Ry.*, 734 F. Supp. at 232; *Adams v. CSX Transp.*, *supra*, then witnessing such conduct cannot be actionable either. "Liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." Restatement (Second) of Torts §46 comment d. It was appropriate for the Circuit Court of Appeals to affirm the District Court's grant of summary judgment because as comment h to Restatement (Second) of Torts §46 instructs "it is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery . . ." *Cox v. Keystone Carbon Co.*, 861 F.2d 390, 395 (3d Cir. 1988); *Fudge v. Penthouse Int'l Ltd.*, 840 F.2d 1012, 1021 (1st Cir.) *cert. denied*, 488 U.S. 821 (1988); *Chuy v. Philadelphia Eagles Football Club*, 595 F.2d 1265, 1274 (3d Cir. 1979); *Simmons v. Norfolk & W. Ry.*, 734 F. Supp. at 232; *LeCroy v. Dean Witter Reynolds, Inc.*, 585 F. Supp. 753, 765 (E.D. Ark. 1984); *Kutner v. Eastern Airlines, Inc.*, 514 F. Supp. 553, 557 (E.D. Pa. 1981).

CONCLUSION

For all the foregoing reasons, Respondent, Consolidated Rail Corporation, respectfully requests that the Petition for Writ of Certiorari of Thomas J. Carroll should be denied.

Respectfully submitted,



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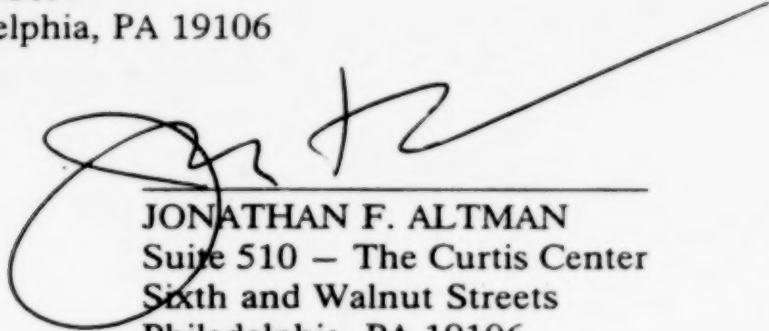
*Attorney for Respondent,
Consolidated Rail Corporation*

November 27, 1991

CERTIFICATION OF SERVICE

I hereby certify that three copies of the foregoing Brief of Respondent in Opposition to Petition for Writ of Certiorari were served on counsel for Petitioner at the address below by United States Mail, first-class postage prepaid, on November 27, 1991 pursuant to Supreme Court Rule of Procedure 29.3:

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APPENDIX TO
BRIEF OF RESPONDENT IN OPPOSITION

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

No. 89-4650

THOMAS J. CARROLL

v.

CONSOLIDATED RAIL CORPORATION

Oral deposition of THOMAS J. CARROLL, taken pursuant to notice, in the law offices of Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, Pennsylvania, commencing on Wednesday, April 25, 1990, at or about 2:30 p.m., before Linda M. Passero, C.S.R., N.P.

APPEARANCES:

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* * * *

BY MR. ALTMAN:

Q. What occurred then on January 9, 1989 that you say caused you an injury?

BY MR. CARROLL:

A. I was on the left side of the room. I said to John MacPherson, we're on the left side of the room, and MacPherson said, yes, the phones aren't working on the right side of the room. I said, it just dawned on me we were on the left side of the room. Behind me — Scanlan was behind me. He was behind me to my right and he was back there, and there was some kind of big foul up

about some car they were supposed to get. They were supposed to get it out of some train and they didn't get it out of the train and the train was out of the yard, and the train was on the road and was running. And Scanlan was in back of me here, he was in back of me screaming on the phone, and he was trying to figure out where he was going to stop this train to get this car out of it. And in the meantime up front there were two train dispatchers up front and there was somebody screaming up there about reports and Mr. Clark and Mr. Rulis were in a dispute up in the front and that's what was going on then.

Q. What is it that you say caused you injury?

A. Well, when I came in — when I first came in it was like pandemonium. It was like in half a vacuum. It was like half there. Like sort of a dim light bulb or half there, like a half vacuum, and I remember I couldn't stand it. He was there, back there screaming and they were up front screaming. And I got up and walked down the hall, I walked down the hall towards the bathroom and I didn't want to go back in. And then I thought I got to go back in. And I walked in and the phones were ringing and the radios were blaring and I walked back in and sat down. I was there for a little while and then I walked out the back door and I walked towards the copying machine and then I came back in and I walked in again and I sat down again and it just kept going and going. And by this time the train was on the road, they were trying to figure — Scanlan was trying to arrange something to get this car out and it just — it just seemed like it kept going. It kept going and going. And then finally I got a hold of the daylight — called the daylight ACD at home and I asked him if he would come in and take over the job and I told Mr. Scanlan I was sick and left.

* * * *

SUPREME COURT OF THE UNITED STATES

JAMES A. RAY, PETITIONER

91-704

v.

CONSOLIDATED RAIL CORPORATION AKA CONRAIL

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

THOMAS CARROLL, PETITIONER

91-6253

v.

CONSOLIDATED RAIL CORPORATION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 91-704 AND 91-6253. Decided January 13, 1992

The petitions for writs of certiorari are denied.

JUSTICE WHITE, with whom JUSTICE THOMAS joins
dissenting.

These cases raise the issue whether the Federal Employers' Liability Act (FELA), 45 U.S.C. §§ 51-60, creates a cause of action for emotional injury brought about by acts that lack any physical contact or threat of physical contact. We had expressly reserved this question in *Atchison, Topeka & Santa Fe Railway Co. v. Buell*, 480 U.S. 557, 570-571 (1987). In both cases the Courts of Appeals held that FELA authorizes no such claim.

By contrast with the approach undertaken by the Courts of Appeals in these cases, the Court of Appeals for the Fifth Circuit has propounded a contrary rule. In *Plaisance v. Texaco, Inc.*, 937 F. 2d 1004, 1009 (1991), after fully canvassing the decisions of the Courts of Appeals since *Buell*, the court stated: "We [are] persuaded that an emotional injury can be every bit as harmful, debilitating, and destructive of the quality of one's life as a physical

injury. We therefore hold that a claim for an emotional injury caused by emotional distress negligently inflicted, even without an accompanying physical injury or physical contact, is cognizable under the FELA."

Because a uniform rule should be announced by this Court on this important and recurring issue, I would grant the petitions.